

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

ORIGIN

75-7110

In The
United States Court of Appeals

For The Second Circuit

ALICE MEYERS, RAYMOND MEYERS, KIM MEYERS, an infant by RAYMOND MEYERS, her father and natural guardian, JAMIE MEYERS, an infant by RAYMOND MEYERS, her father and natural guardian; JONI EPSTEIN, an infant by SAMUEL EPSTEIN, her father and natural guardian, and ROBIN SIEGEL, an infant by BERNARD SIEGEL, her father and natural guardian,

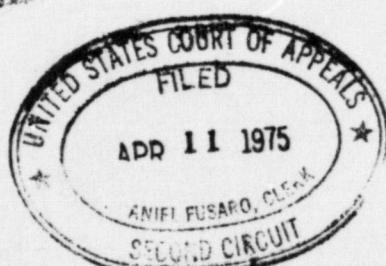
Plaintiffs-Appellants,

v.s.

NATIONAL AIRLINES, INC.,

Defendant-Appellee.

APPELLANTS' APPENDIX



LAWRENCE WALDMAN
Attorney for Plaintiffs-Appellants
111 West 57th Street
New York, New York 10019
CO 5-5385

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

DOCKET ENTRIES

U. S. Form No. 106 Rev.

73 CV. I 367

~~JUDGE STEWART~~

~~JUDGE OWEN~~

Jury demand date:
By Pltff, 10-17-74

TITLE OF CASE

ALICE MEYERS, RAYMOND MEYERS, KIM MEYERS, AN INFANT BY RAYMOND MEYERS, HER FATHER AND NATURAL GUARDIAN, JAIME MEYERS, AN INFANT BY RAYMOND MEYERS, HER FATHER AND NATURAL GUARDIAN, JOAN EPSTEIN, AN INFANT BY SAMUEL EPSTEIN, HER FATHER AND NATURAL GUARDIAN, CHAI HAN, AND ROBIN SIEGAL, AN INFANT BY BERNARD SIEGAL, HER FATHER AND NATURAL GUARDIAN

For plaintiff:

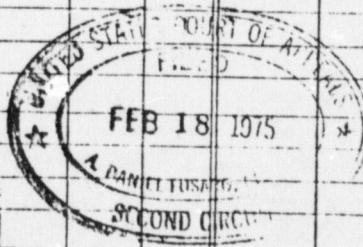
LAWRENCE WALDMAN
111 West 57th St.
N.Y., N.Y. 10019
CO-5-5385

AGAINST

NATIONAL AIRLINES

For defendant:
DANIEL TIGHE & TIGHE
ONE EAST 42ND STREET
NEW YORK, N.Y. 10017

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISR.
J.S. 5 mailed X	Clerk	5/4/73 5/8/73	S. Waldman 6512	15	15
J.S. 6 mailed	Marshal				
Basis of Action \$151,330,000. Docket fee False arrest & imprisonment 49 USC 1374	Witness fees	FFB 18 1975			
Action arose at:	Depositions				



JUDGE STEWART

Date Crd.
Jud. Note

PROCEEDINGS

7-17-73	Complaint filed and summons issued.
7-17-73	Filed Summons with MARSHAL'S RETURN. Served National Airlines by A. Gampo, Dist. Agency Mgr on 5/7/73.
7-17-73	Filed stipulation and order extending defendant's time to answer complaint to 6/28/73. So ordered. Stewart, J.
7-17-73	Filed Stip & Order adjourning motion presently pending on 7/17/73 to 8/3/73, 9:30 A.M., Room 506. Stewart, J.
7-17-73	Filed pltff's affirmation in opposition for an order dismissing certain causes of complaint.
7-22-73	Filed Deft. Reply Affidavit.
7-24-73	Filed sur reply affdt of Lawrence Waldman (for pltff.) to the reply affdt. of Randal Craft Jr. .
7-25-74	Mailed notice of re-assignment
7-26-74	Pre-trial before Owen J.
7-26-74	Filed Defts. First Set of Interrogs.
July 29, 73	Filed Deft. National Airlines Inc. Notice of Motion. Re: Dismiss Complaint. recv'd 3/20/73
July 29, 73	Filed Deft. Memorandum of Law. (Nat'l Air Lines Inc.) recv'd 3/20/74.
Aug 26, 74	Filed Stip & Order that the time for service Answers to defts. interrogs. is extended to 4/1/74. Owen J.
Aug 26, 74	Filed Pltffs. Answer to defts. 1st Set of Interrogs.
Aug 26, 74	Filed supplemental Memorandum in support of deft. National Airlines Motion to dismiss pltffs. causes of action for damages to persons over 21 years of age arising out Intentional torts.
Aug 26, 74	Filed Deft. National Airlines Notice of Deposition of pltffs. on 4/15/16/74.
Aug 26, 74	The Trial before Owen J.
Aug 26, 74	Filed Order that the 1st, 2nd, 3rd, 4th, in pltff.s complaint are dismissed, etc. & that the 10th & 13th are dismissed as indicated; & that the pltffs. shall serve a new complaint as indicated. Owen J. (mailed notice)
Aug 26, 74	Filed Memo. No. 1, on motion dated 6/29/74. Motion disposed of in accordance with the order dated 4/10/74 upon the agreement of the parties. Owen J. (mailed notice)
Aug 26, 74	Filed Deft.s. Notice of Entry of order dated 4/12/74.
Aug 29, 74	Filed Pltff's INTENDED COMPLAINT.
Sept 31-74	Filed stip & order extending deft's time to answer to 6-21-74 except that no motion to dismiss may be made--Owen, J.
Oct 21, 74	Filed ANSWER.
Oct 21, 74	Filed Pltffs. reply to the affirmative defenses.
Oct 21, 74	Filed Stip & Order that the pretrial depositions of pltffs. scheduled as indicated on dates as indicated. & that the pretrial depositions of the pltffs. must be concluded prior to the taking of any pretrial depositions of the deft. Owen J.
Oct 29, 74	Filed stip & order-Pre-trial depositions of pltffs are rescheduled--Owen, J,
Oct 24-74	Filed deft's notice to take deposition of R.Norris.
Oct 21-74	Filed pltff's first set of interrogs.
Oct 17-74	P.T.C. HERD, OWEN, J.
Oct 18, 74	Filed Pltffs. Notice of Motion & supporting affidavit. Re: Stay taking deposition ret. 10/18/84.
Oct 18, 74	Filed Memo. End. on motion dtd. 10/18/74. Motion denied. So Ordered Owen J (mailed notice)
Oct 21-74	Filed deft's affdt in opposition to pltff's motion for a stay.
Oct 17-74	Filed pltffs' jury demand.
Oct 17-74	Filed pltffs' affdt in support of motion for a stay.
Oct 17-74	Filed deft's (Nat'l Airlines) objections to interrogs.

Continued

R

ORDER OF UNITED STATES DISTRICT COURT ENTERED
FEBRUARY 4, 1975

3a

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ALICE MEYERS, RAYMOND MEYERS, KIM :
MEYERS, an infant by RAYMOND MEYERS,
her father and natural guardian, : ORDER AND NOTICE
JAMIE MEYERS, an infant by RAYMOND : OF ENTRY
MEYERS, her father and natural :
guardian, JONI EPSTEIN, an infant : 73 Civ. 1987 RO
by SAMUEL EPSTEIN, her father and :
natural guardian, and ROBIN SIEGEL,
an infant by BERNARD SIEGEL, her :
father and natural guardian,
Plaintiffs, :
-against- :
NATIONAL AIRLINES, INC., :
Defendant.
:

PLEASE TAKE NOTICE that an Order, which was endorsed on the cover of defendant's motion for partial summary judgment and of which the within is a true copy, was duly entered in the office of the Clerk of the United States District Court for the Southern District of New York on February 4, 1975.

Dated: February 5, 1975
New York, N. Y.

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendant
National Airlines, Inc.
One State Street Plaza
New York, N. Y. 10004
212-344-6800

TO:

LAWRENCE WALDMAN, ESQ.
Attorney for Plaintiffs
111 West 57th Street
New York, N. Y. 10019

ENDORSEMENT - Myers v. National Airlines - 73 Civ. 1987

Defendant's motion pursuant to Fed. R. Civ. Pa., Rule 56(b) seeking partial summary judgment dismissing the first four causes of action of plaintiffs' amended complaint is granted. While these causes of action are cast in terms of negligence and breach of contract, their gravamen is, in fact, assault and battery, false arrest, false imprisonment and malicious prosecution subject to the one-year statute of limitations contained in N.Y.C. P.L.R. 215.3. Manning v. 1234 Corp., 174 Misc. 36, 20 N.Y.S.2d 121 (Sup. Ct.) aff'd 260 A.D. 914, 24 N.Y.S.2d 302 (1st Dept. 1940); Loehr v. East Side Omnibus Corp., 259 A.D. 200, 18 N.Y.S.2d 529 (1st Dept. 1940) aff'd 287 N.Y. 670 (1941); Chapman v. Johnson, 39 A.D.2d 629, 331 N.Y.S. 2d 184 (4th Dept. 1972). Plaintiffs cannot, by misdescribing the torts already dismissed by my order of April 10, 1974, circumvent the one-year statute of limitations applicable to these claims. Noel v. Interboro Mutual Indemnity Ins. Co., 31 A.D. 2d 54, 295 N.Y. S.2d 399 (1st Dept. 1968) aff'd 29 N.Y. 2d 743, 326 N.Y. S.2d 396 (1971).

SO ORDERED:

s/ K. Owen
U.S.D.J.

February 3, 1975.

DEFENDANT'S NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT 5a
UNITED STATES DISTRICT COURT (Dated November 4, 1974)

SOUTHERN DISTRICT OF NEW YORK

ALICE MEYERS, RAYMOND MEYERS, KIM
MEYERS, an infant by RAYMOND MEYERS,
her father and natural guardian,
JAMIE MEYERS, an infant by RAYMOND
MEYERS, her father and natural
guardian; JONI EPSTEIN, an infant
by SAMUEL EPSTEIN, her father and
natural guardian, and ROBIN SIEGEL,
an infant by BERNARD SIEGEL, her
father and natural guardian,

NOTICE OF MOTION FOR
PARTIAL SUMMARY JUDGMENT

73 Civ. 1987 RO

Plaintiffs,

-against-

NATIONAL AIRLINES, INC.,

Defendant.

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affidavit of William J. Junkerman, sworn to the 4th day of November, 1974, the accompanying memorandum of law, and all of the pleadings and proceedings heretofore had herein, the undersigned will move this Court in Room 2804 of the United States Courthouse, Foley Square, County, City, and State of New York, on the 15th day of November, 1974, at 2:15 o'clock in the afternoon of that day or as soon thereafter as counsel may be heard, for an order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure granting summary judgment dismissing plaintiff Alice Meyers' first, second, third, and fourth causes of action against defendant upon the ground that those causes of action are barred by New York

CPLR 215.3 and by this Court's order of April 10, 1974,
and for such other and further relief as to this Court may
seem just and proper.

Dated: November 4, 1974

New York, New York

Yours, etc.,

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendant
National Airlines, Inc.
One State Street Plaza
New York, New York 10004

To:

LAWRENCE WALDMAN, ESQ.
Attorney for Plaintiffs
111 West 57th Street
New York, New York 10019

*By William Jankewicz
A member of the firm*

AFFIDAVIT OF WILLIAM J. JUNKERMAN PURSUANT TO RULE 9(g)
UNITED STATES DISTRICT COURT

7a

SOUTHERN DISTRICT OF NEW YORK

ALICE MEYERS, RAYMOND MEYERS, KIM
MEYERS, an infant by RAYMOND MEYERS,
her father and natural guardian,
JAMIE MEYERS, an infant by RAYMOND
MEYERS, her father and natural
guardian; JONI EPSTEIN, an infant
by SAMUEL EPSTEIN, her father and
natural guardian, and ROBIN SIEGEL,
an infant by BERNARD SIEGEL, her
father and natural guardian,

AFFIDAVIT PURSUANT
TO RULE 9(g)

73 Civ. 1987 RO

Plaintiffs,

-against-

NATIONAL AIRLINES, INC.

Defendant.

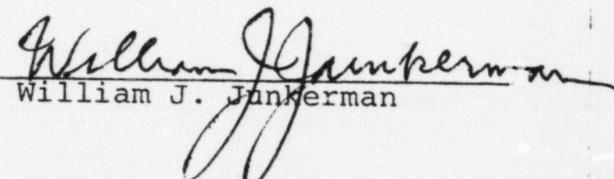
STATE OF NEW YORK)
)
) ss.:
COUNTY OF NEW YORK)

WILLIAM J. JUNKERMAN, being duly sworn, deposes
and says:

I am an attorney-at-law and a member of the firm
of Haight, Gardner, Poor & Havens, attorneys for defendant
National Airlines, Inc., and I am familiar with all of the
pleadings and proceedings heretofore had herein. In
accordance with the requirements of Rule 9(g) of the
General Rules of this Court, I herewith set forth a short
and concise statement of the material facts as to which de-
fendant contends there is no genuine issue to be tried:

This is an action seeking to recover compensatory
and punitive damages for an incident that occurred on board
one of defendant's aircraft at the Miami International Air-

port in the City of Miami, County of Dade and State of Florida, on January 2, 1971. Mrs. Meyers and the other four female plaintiffs boarded defendant's flight No. 98, but, upon discovering that all of the seats were occupied, she refused to leave the aircraft when requested to do so by defendant's employees. Consequently, defendant's employees called the local police, who came on board the aircraft and also requested that plaintiff Alice Meyers (among others) leave the aircraft. Mrs. Meyers refused to leave the aircraft, and the police used force to remove Mrs. Meyers. Furthermore, Mrs. Meyers was arrested and thereafter imprisoned for a few hours that same day. Mrs. Meyers was charged with disorderly conduct, but that charge was dismissed on April 8, 1971. Plaintiffs' original complaint was served on May 7, 1973, more than two years following the incident and the dismissal of the charge against Mrs. Meyers. At the time of the incident, plaintiff Alice Meyers was over 21 years of age.


William J. Junkerman

Sworn to before me this

4th day of November, 1974.

(Seal)

5/

JOSEPHINE AMANTE
Notary Public, State of New York
No. 50-0057100
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1975

AFFIDAVIT OF WILLIAM J. JUNKERMAN IN SUPPORT OF MOTION 9a
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ALICE MEYERS, RAYMOND MEYERS, KIM
MEYERS, an infant by RAYMOND MEYERS,
her father and natural guardian,
JAMIE MEYERS, an infant by RAYMOND
MEYERS, her father and natural
guardian, JONI EPSTEIN, an infant
by SAMUEL EPSTEIN, her father and
natural guardian, and ROBIN SIEGEL,
an infant by BERNARD SIEGEL, her
father and natural guardian,

AFFIDAVIT IN SUPPORT
OF DEFENDANT'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT

73 Civ. 1987 RO

Plaintiffs,

-against-

NATIONAL AIRLINES, INC.,

Defendant.

STATE OF NEW YORK)
)
) ss.:
COUNTY OF NEW YORK)

WILLIAM J. JUNKERMAN, being duly sworn, deposes
and says:

I am an attorney-at-law and a member of the firm
of Haight, Gardner, Poor & Havens, attorneys for defendant
National Airlines, Inc. (hereinafter referred to as
"National") and I am familiar with all of the pleadings and
proceedings heretofore had herein. I make this affidavit
in support of National's motion, pursuant to Rule 56(b) of
the Federal Rules of Civil Procedure, for partial summary
judgment dismissing plaintiff Alice Meyers' first, second,
third, and fourth causes of action.

This is an action seeking to recover \$101,430,000
in compensatory and punitive damages for an incident that

occurred on board one of defendant's aircraft at the Miami International Airport in the City of Miami, County of Dade, and State of Florida, on January 2, 1971. Mrs. Meyers and the other four female plaintiffs boarded defendant's Flight No. 98, but, upon discovering that there were no more seats available on that flight, she refused to leave the aircraft when requested to do so by defendant's employees. Consequently, defendant's employees called the local police, who came on board the aircraft and also requested that plaintiff Alice Meyers (among others) leave the aircraft. Mrs. Meyers refused to leave the aircraft, so the policeman had to use force and his powers of arrest on Mrs. Meyers in order to accomplish her removal. (Defendant maintains that the force used was only what was reasonably necessary under the circumstances, and plaintiffs contend otherwise, but this is not relevant to this motion.)

Plaintiffs' original complaint, which was served on May 7, 1973, included causes of action by plaintiff Alice Meyers for, inter alia, assault and battery, false arrest, false imprisonment, malicious prosecution, and related intentional torts. (Because of their extreme length, copies of the original and amended complaints are not annexed hereto but will, if the Court so desires, be submitted upon the hearing of this motion. Of course, both are already on file with this Court.) Since plaintiff Alice Meyers was over 21 years of age on January 2, 1971, her causes of action for intentional tort were among those that defendant moved to dismiss on June 28, 1973. On April 10, 1974, this Court

granted that motion and dismissed, inter alia, plaintiff Alice Meyers' first, second, third, and fourth causes of action in the plaintiffs' complaint upon the ground that they were barred by the applicable statute of limitations, New York Civil Practice Law and Rules (CPLR) 215.3. It was further ordered:

The plaintiffs shall serve a new complaint that shall contain no allegation of or reference to damages to persons over twenty-one (21) years of age allegedly resulting, directly or derivatively, from intentional torts.

On or about May 17, 1974, the plaintiffs served an amended complaint, but not in accordance with this provision of the order. It appeared that the amended complaint's causes of action on behalf of Alice Meyers were essentially the same causes of action alleged in the original complaint that had been dismissed, that is, it appeared that the dismissed causes of action were being re-alleged in the amended complaint with little more than the addition of some new language nominally characterizing them as causes of action for negligence, breach of implied warranty of safe passage, etc.

The following paragraphs from plaintiff Alice Meyers' first cause of action in the "amended" complaint speak for themselves:

SEVENTY-SECOND: That, said defendant, through its agents, servants and employees violently, and with force of arms, seized and lay hold of plaintiff, and attempted to forcibly eject plaintiff from said airplane.

SEVENTY-THIRD: That, the said defendant, its agents, servants and employees, did then call upon, and request, a police officer of the Metropolitan Police Department of Dade County to enter upon said airplane and aid them in forcibly ejecting the plaintiff from said airplane.

SEVENTY-FOURTH: That, the said police officer did respond and, under the direction and control of the agents, servants, and employees of the defendant did aid and assist the agents, servants, and employees of the defendant in forcibly ejecting plaintiff from the airplane.

SEVENTY-FIFTH: That, the defendant, its agents, servants, and employees did then request, demand and insist upon the arrest of the plaintiff by said police officer.

SEVENTY-SIXTH: That, the defendant, its agents, servants, and employees caused plaintiff to be arrested.

SEVENTY-SEVENTH: That, the acts of the defendant, its agents, servants and employees were in violation of the rules and regulations of the defendant governing the conduct of its employees in connection with the boarding of its airplanes by its fare-paying passengers.

SEVENTY-EIGHTH: That, the aforesaid acts of defendant were occasioned wholly and solely

through the carelessness, recklessness, and negligence of the defendant, with no fault or lack of care on the part of the plaintiff, Alice Meyers, contributing thereto, in that said defendant operated, managed, directed and controlled their aforesaid boarding operations in a careless, reckless, and negligent manner; in that said defendant, its agents, servants, and employees failed and refused to obey defendant's own instructions to its agents, servants, and employees for boarding procedures; and in that said defendant operated, managed, directed and controlled the use of its said aircraft by its passengers in so careless, reckless, and negligent a manner as to cause the injuries and damages complained of herein.

SEVENTY-NINTH: That, by reason of the negligence of the defendant, herein alleged, plaintiff was handcuffed and was forcibly dragged, while handcuffed, throughout the airline terminal at Miami International Airport, in full view of the multitudes of people there.

EIGHTIETH: That, by reason of the negligence of the defendant, herein alleged, criminal charges were levied against the plaintiff, Alice Meyers.

EIGHTY-FIRST: That, by reason of the negligence of the defendant, herein alleged,

plaintiff was deprived of her liberty, and the said police took plaintiff to the police station in Miami, and there entered her on the records as under arrest on a charge of disorderly conduct and caused her fingerprints and photograph to be taken in accordance with usual police practice of the arrest of criminals, and held her on said charge for a period of three hours, when she was released on bail as any common criminal.

EIGHTY-SECOND: That, by reason of the negligence of the defendant, herein alleged, plaintiff was caused to be incarcerated, in all, a total of three hours, in a cell with prostitutes, drug-addicts, and various and sundry vicious criminals.

EIGHTY-THIRD: That, by reason of the negligence of the defendant, herein alleged, plaintiff, Alice Meyers, was required to post bail, retain legal counsel and to return to the State of Florida for trial.

EIGHTY-FOURTH: That, as a result of the foregoing, plaintiff was compelled to and did expend large sums of money for bail, legal counsel, transportation, living expenses and other expenses associated with her imprisonment and trial and incurred a loss of earnings, by reason thereof.

EIGHTY-FIFTH: That, by reason of the negligence of the defendant, hereinabove alleged, plaintiff became sick, sore, lame and disabled; sus-

tained severe and serious personal injuries to various and diverse parts of her body; was compelled to and did undergo extensive medical care and attention for said injuries and was compelled to and did expend large sums of money therefor; and was otherwise incapacitated from the normal pursuits of life.

EIGHTY-SIXTH: That, by reason of the negligence of defendant, hereinabove alleged, plaintiff was greatly humiliated, and suffered great mental and bodily distress, embarrassment, scorn, and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally, and emotionally, as well as in character and reputation.

EIGHTY-SEVENTH: That, the aforesaid injuries, emotional, mental and physical, and the damages incurred by the plaintiff were occasioned wholly and solely through the carelessness, recklessness, and negligence of the defendant, with no fault or lack of care on the part of the plaintiff, Alice Meyers, contributing thereto, in that said defendant operated, managed, directed and controlled their aforesaid boarding operation in a careless, reckless and negligent manner; in that said defendant, its agents, servants, and employees,

failed and refused to obey defendant's own instructions to its agents, servants and employees for boarding procedures; and in that said defendant operated, managed, directed and controlled the use of its said aircraft by its passengers in so careless, reckless and negligent a manner as to cause the injuries and damages complained of herein.

EIGHTY-EIGHTH: That, by reason of the negligence of the defendant, herein, its agents, servants and employees, as aforesaid, plaintiff, Alice Meyers, has sustained compensatory damages in the sum of Two-Hundred Fifty-Thousand (\$250,000.00) Dollars.

Plaintiff Alice Meyers' second cause of action in the amended complaint is simply a reallegation and reiteration of the first cause of action with the addition of the following paragraphs:

NINTIETH: That, the acts of the defendant, its agents, servants and employees, as aforesaid, were wanton, vicious and malicious and constituted gross negligence.

NINETY-FIRST: That, by reason of the foregoing, plaintiff, Alice Meyers, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

The third cause of action of plaintiff Alice Meyers in the amended complaint also realleges the above-quoted allegations of the first cause of action and then

claims that those allegations constitute a breach of an implied warranty of safe passage by the defendant, its agents, servants, and employees:

NINETY-THIRD: That, at the time said defendant, its agents, servants, and employees, offered its tickets for sale to the general public, for passage upon its aircraft, it impliedly warranted to the general public that it would render, in exchange for the purchase of a ticket, safe passage upon its aircraft.

NINETY-FOURTH: That, in reliance upon this implied warranty of safe passage upon its aircraft, plaintiff purchased passage for use upon an aircraft owned, operated, managed and controlled by defendant.

NINETY-FIFTH: That, the defendant, its agents, servants, and employees, breached the aforesaid implied warranty of safe passage, as aforesaid.

NINTH-SIXTH; That, by reason of the breach of warranty, as aforesaid, plaintiff, Alice Meyers, has suffered compensatory damages in the sum of Two-Hundred Fifty Thousand (\$250,000.00) Dollars.

Plaintiff Alice Meyers fourth cause of action in the amended complaint also realleges the above-quoted allegations of the first cause of action, as well as the above-quoted allegations of the third cause of action. To this is added the following:

NINETY-NINTH: That, the breach of this said implied warranty was deliberate and calculated on the part of the defendant, its agents, servants and employees, to cause injury and damage to the plaintiff.

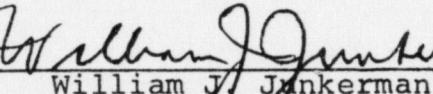
ONE-HUNDREDTH: That, by reason of the foregoing, plaintiff, Alice Meyers, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

To insure that there would be no mistake about the true gravamen of these allegations, defendant's attorneys noticed the deposition of plaintiff Alice Meyers for June 25, 1974. That deposition was adjourned from time to time pursuant to the requests of plaintiffs' counsel and was finally taken on September 5, 1974. Mrs. Meyers' testimony at that deposition confirmed that her claims, however, characterized, were in fact claims for intentional torts in that the compensatory and punitive damages being alleged arose, not out of the fact that she was unable to fly on flight 98, but out of the fact that she was forcibly removed from the aircraft, arrested, and jailed. (It should be noted that the transcript of Mrs. Meyers' deposition testimony was sent to plaintiffs' counsel on October 8, 1974, but it has still not been executed and returned.

As demonstrated in the accompanying memorandum of law, for the purpose of determining the applicable statute of limitations, New York courts would unquestionably find that plaintiff Alice Meyers' first, second, third, and fourth

causes of action are seeking recovery for intentional torts and are, therefore, barred by New York CPLR 215.3. Furthermore, the allegations in plaintiff Alice Meyers' first, second, third, and fourth causes of action clearly violate the aforementioned order of this Court of April 10, 1974, which ordered the plaintiffs to serve a new complaint containing "no allegation of or reference to damages to persons over twenty-one (21) years of age allegedly resulting, directly or derivatively, from intentional torts."

WHEREFORE, I respectfully request that National's motion for partial summary judgment dismissing plaintiff Alice Meyers' first, second, third, and fourth causes of action be in all respects granted, with costs, upon the ground that these causes of action are barred by the applicable New York statute of limitations, CPLR 215.3, and by this Court's order of April 10, 1974.



William J. Junkerman

Sworn to before me this

4th day of November, 1974.

(Seal) S/

JOSEPHINE AMANTE
Notary Public, State of New York
No. 00-0057100
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1975

MEMORANDUM IN SUPPORT OF MOTION
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

• • • • • • • • • • • • • • • • • • • x

ALICE MEYERS, RAYMOND MEYERS,
KIM MEYERS, an infant by RAYMOND
MEYERS, her father and natural
guardian, JAMIE MEYERS, an in-
fant by RAYMOND MEYERS, her
father and natural guardian,
JONI EPSTEIN, an infant by
SAMUEL EPSTEIN, her father and
natural guardian, and ROBIN
SIEGEL, an infant by BERNARD
SIEGEL, her father and natural
guardian,

Index No.

73 Civ. 1987 RO

Plaintiffs,

-against-

NATIONAL AIRLINES, INC.,

Defendant.

• • • • • • • • • • • • • • • • • • • x

MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT NATIONAL AIRLINES'
MOTION FOR PARTIAL SUMMARY JUDGMENT
DISMISSING PLAINTIFF ALICE MEYERS'
CAUSES OF ACTION ARISING OUT OF
INTENTIONAL TORTS

STATEMENT

As indicated in the accompanying affidavit, this is an action seeking to recover \$101,430,000.00 in compensatory and punitive

damages for an incident that occurred on board one of defendant's aircraft at the Miami International Airport in the City of Miami, County of Dade, and State of Florida, on January 2, 1971. Mrs. Meyers and the other four female plaintiffs boarded defendant's Flight No. 98, but upon discovering that there were no more seats available on that flight, she refused to leave the aircraft when requested to do so by defendant's employees. Consequently, defendant's employees called the local police, who came on board the aircraft and also requested that plaintiff Alice Meyers leave the aircraft. Mrs. Meyers refused to leave the aircraft, so the policeman had to use force and his powers of arrest in order to remove her from the plane. (Defendant maintains that the force used was only what was reasonably necessary under the circumstances, and she contends otherwise, but this is not relevant to this motion.)

Plaintiffs' original complaint included causes of action by plaintiff Alice Meyers for, inter alia, assault and battery, false arrest, false imprisonment, malicious prosecution, and related

intentional torts. Since Mrs. Meyers was over 21 years of age on January 2, 1971, her causes of action for intentional torts were among those that defendant moved to dismiss on June 28, 1973. On April 10, 1974, this Court granted that motion and dismissed, inter alia, plaintiff Alice Meyers' first, second, third, and fourth causes of action in the plaintiffs' complaint upon the ground that they were barred by the applicable statute of limitations, New York Civil Practice Law and Rules (CPLR) 215.3. It was further ordered that "the plaintiff shall serve a new complaint that shall contain no allegation of or reference to damages to persons over twenty-one (21) years of age allegedly resulting, directly or derivatively, from intentional torts."

On or about May 17, 1974, the plaintiffs served an amended complaint, ostensibly in accordance with the provisions of this Court's aforementioned order. To defendant's counsel, it appeared that the amended complaint's causes of action on behalf of Alice Meyers were essentially

the same causes of action alleged in the original complaint that had been dismissed, that is, it appeared that the dismissed causes of action were being realleged in the amended complaint with little more than the addition of some new language nominally characterizing them as causes of action for negligence, breach of implied warranty of safe passage, etc. (See paragraphs 72 - 100 of plaintiffs' complaint.) To determine the scope of these allegations, the defendant noticed the deposition of plaintiff Alice Meyers for June 25, 1974. That deposition was adjourned from time to time pursuant to the requests of plaintiffs' counsel and was finally taken on September 5, 1974. Mrs. Meyers' testimony at that deposition demonstrated that her claims, however characterized, were in fact claims for intentional torts in that the compensatory and punitive damages being alleged arose, not out of the fact that she was unable to fly on Flight 98, but out of the fact that she was forcibly removed from the aircraft, arrested, and jailed. Under these circumstances, it is respectfully submitted that the law described herein requires the dis-

missal of plaintiff Alice Meyers' first, second, third, and fourth causes of action upon the ground that they are, in fact, seeking recovery for intentional torts and are barred by New York CPLR 215.3, as well as by this Court's Order of April 10, 1974.

POINT I

PLAINTIFF ALICE MEYERS' FIRST, SECOND, THIRD, AND FOURTH CAUSES OF ACTION ARE BARRED BY THE ONE-YEAR STATUTE OF LIMITATIONS, CPLR 215.3

In its memorandum of law in support of its earlier motion to dismiss, defendant demonstrated that all of plaintiff Alice Meyers' causes of action for intentional tort were governed by the one-year statute of limitations of New York CPLR 215.3, and this Court granted that motion. Consequently, it remains only to note here that, under the law of New York, the New York Statute of Limitations applicable to intentional torts, CPLR 215.3, is applicable to causes of action that sound in intentional tort even though they may seem to be framed in negligence or contract.

Initially, it should be pointed out that the allegations in paragraphs 72 through 100 of

plaintiffs' amended complaint give every indication that they arise out of intentional torts and are seeking damages for such torts. To be sure, these allegations are classified by plaintiffs as allegations of negligence, breach of implied warranty of safe passage, etc., but these characterizations are belied by their substantive contents. The self-serving labels and characterizations are also belied by the testimony of plaintiff Alice Meyers at her deposition. The damages she described were not caused by the delay that resulted when Mrs. Meyers was prevented from flying on Flight 98 but, instead, were damages allegedly resulting from her forcible removal from the aircraft and her arrest. In this connection, it should be emphasized that CPLR 215.3 applies not just to actions labeled as actions for intentional torts but to all actions seeking "to recover damages for" intentional torts.

The rule appears well-settled that, in determining which statute of limitations applies to a cause of action, New York courts must direct their inquiry to the true gravamen of the action

and not to the label given the cause of action by the plaintiff. For example, in Loehr v. East Side Omnibus Corp., 259 App. Div. 200 (1st Dep't 1940), plaintiff alleged injuries incurred as a result of defendant's breach of its contractual undertaking to convey the plaintiff safely to her destination. Again, defendant pleaded that the action truly sounded in tort and was thus barred by the statute of limitations. The Appellate Division agreed:

So here, while the plaintiff attempts to plead a cause of action in contract, it is quite apparent that the liability, if any, must rest in negligence. If that is so, the three-year Statute of Limitations applies. Stress has been placed by plaintiff upon the case of Busch v. Interboro R.T. Co. (187 N.Y. 388) as upholding her contention that her action is not barred by the three-year statute. The question of a Statute of Limitations was not there involved (see opinion of Mr. Justice McAvoy in Hermes v. Westchester Racing Assoc., 213 App. Div. 147).

259 App. Div. at 203.

To the same effect is Faron v. Eastern Air Lines, 193 Misc. 395 (Sup. Ct., N.Y. Co. 1949), where the plaintiff brought a wrongful death action after her husband was killed in the crash of

defendant's aircraft. Five causes of action were alleged, two sounding in negligence, one based on the Connecticut Wrongful Death Statute, and two based on a breach of contract of safe passage and proper maintenance. The court wrote:

As to the first and second causes of action, although they are couched in contract language, it is obvious that liability, if any, will be predicated upon proof of negligence. Where, as here, the gravamen of the cause of action is an alleged breach of duty through negligence, the action is governed by the applicable law of torts, even though the allegations referred to a breach of contract.

193 Misc. at 397.

The court went on to discuss with approval the Loehr decision. Faron also indicated approval of the decision in Manning v. 1234 Corp., 174 Misc. 36 (Sup. Ct., N.Y. Co. 1940), which is particularly important here since it dealt with an action sounding in intentional tort.

In Manning, the plaintiff claimed damages for injuries sustained when he was allegedly struck by defendant innkeeper. Plaintiff did not allege assault and battery (which would have been barred

by the then-existing two-year statute of limitations) but based his action solely on breach of contract. The court wrote:

There seems to have been considerable doubt as to the application of the Statute of Limitations when the injury is caused by assault and neg
ligence, and when the plaintiff sues for a breach of contract and attempts to recover for the injury sustained as a result of the tort. However, it seems to have been recently settled by the Appellate Division First Department in the unanimous decision in the case of Loehr v. East Side Omnibus Corp. . . . In considering the present complaint we can see no difference between the case under review and that of Loehr v. East Side Omnibus Corp. (supra) except that one has its basis in negligence and the other in assault. The basic fact controls the statute. Here the ruling of the court is that the Statute of Limitations governing assault cases is the one that must apply. Therefore, as the action is barred by this statute, the second amended complaint is dismissed.

174 Misc. at 37-38.

Together, the Loehr and Manning decisions clearly show that, where a plaintiff alleges facts that, if proved, would subject the defendant to liability for an intentional tort, the plaintiff

cannot avoid the application of the statute of limitations for intentional tort actions by characterizing the defendant's acts as negligence or breach of contract.

Another decision applying the statute of limitations applicable to intentional torts is Noel v. Interboro Mutual Indemnity Ins. Co., 31 App. Div. 2d 54 (1st Dep't 1968), aff'd mem., 29 N.Y. 2d 743 (1971). This case dealt with an action that sounded in defamation, but it also teaches the basic lesson that the plaintiff may not avoid a shorter statute of limitations by framing his cause of action so as to make it appear that it is subject to a longer statute of limitations. Cf. Chapman v. Johnson, 39 App. Div. 2d 629 (4th Dep't 1972); Pearl v. Lesnick, 20 App. Div. 2d 761 (1st Dep't 1964); aff'd mem., 19 N.Y. 2d 590 (1967); Fischer v. Seamen's Church Institute of N.Y., 195 Misc. 471 (Sup. ct., Queens Co. 1949).

As indicated, the decisional law demonstrates that, in determining the nature of a cause of action in order to find out which statute

of limitations is applicable, the gravamen of actions such as plaintiff Alice Meyers' first four causes sound in intentional tort, even though they may be framed in contract or negligence. Therefore, plaintiff Alice Meyers' first, second, third, and fourth causes of action herein are governed by the one-year statute of limitations of New York CPLR 215.3. Since this action was not commenced within one year after the incident out of which the action arose, these causes of action are barred by CPLR 215.3.

CONCLUSION

DEFENDANT NATIONAL AIRLINES' MOTION FOR PARTIAL SUMMARY JUDGMENT DISMISSING PLAINTIFF ALICE MEYERS' FIRST, SECOND, THIRD, AND FOURTH CAUSES OF ACTION SHOULD BE IN ALL RESPECTS GRANTED, UPON THE GROUND THAT THEY ARE BARRED BY NEW YORK CPLR 215.3, AS WELL AS BY THIS COURT'S ORDER OF APRIL 10, 1974.

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendant
National Airlines, Inc.
One State Street Plaza
New York, New York 10004
212-344-6800

WILLIAM J. JUNKERMAN,
RANDAL R. CRAFT, JR.,
Of Counsel.

AFFIDAVIT OF LAWRENCE WALDMAN IN OPPOSITION PURSUANT TO
UNITED STATES DISTRICT COURT RULE 9(g)
SOUTHERN DISTRICT OF NEW YORK

ALICE MEYERS, RAYMOND MEYERS, KIM MEYERS, an infant by RAYMOND MEYERS, her father and natural guardian, JAMIE MEYERS, an infant by RAYMOND MEYERS, her father and natural guardian, JONI EPSTEIN, an infant by SAMUEL EPSTEIN, her father and natural guardian, and ROBIN SIEGEL, an infant by BERNARD SIEGEL, her father and natural guardian,

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OPPOSING AFFIDAVIT
PURSUANT TO RULE 9(g)

Plaintiffs,

-against-

NATIONAL AIRLINES, INC.,

Defendant.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

LAWRENCE WALDMAN, being duly sworn, deposes and says:

1. That, I am an attorney-at-law and the attorney for all of the plaintiffs, herein.
 2. That, I am familiar with all of the pleadings and proceedings heretofore had herein.
 3. That, the instant motion is directed solely to those causes of action pleaded on behalf of plaintiff, ALICE MEYERS.
 4. That, in accordance with the requirements of Rule 9(g) of the General Rules of this Court, the attorney for the defendant has set forth a statement, which, although short and concise, does not present fairly the issues brought before this Court.

5. That, on January 2, 1971, plaintiff, ALICE MEYERS, had a confirmed reservation for an airplane flight on National Airlines flight #98 scheduled to depart Miami International Airport for John J. Kennedy International Airport in New York City at 4:30 p.m. on that date.

6. That, on that date, at least two hours prior to departure time, the plaintiff, ALICE MEYERS, appeared at the defendant, NATIONAL AIRLINES's, ticket counter at Miami International Airport and "checked in".

7. That, on that date, at least one hour prior to departure time, the plaintiff, ALICE MEYERS, appeared at a counter maintained by defendant, NATIONAL AIRLINES, for the purpose of assigning seats on Flight #98.

8. That, at that time, plaintiff, ALICE MEYERS, was assigned a particular seat upon said aircraft.

9. That, plaintiff, ALICE MEYERS, pursuant to permission and direction of defendant, through its agents, servants and employees, boarded said aircraft.

10. That, at that time, plaintiff, ALICE MEYERS, discovered that defendant had carelessly, recklessly and negligently either assigned her particular seat to another or, with knowledge that it had already assigned said particular seat, carelessly, recklessly and negligently permitted another person to occupy said seat.

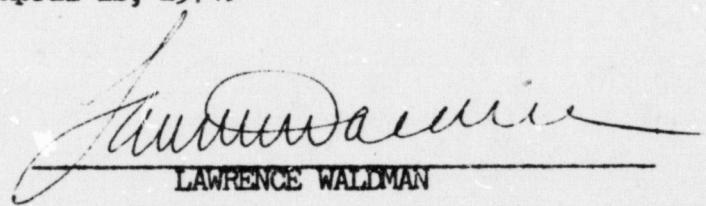
11. That, although plaintiff, ALICE MEYERS, exhibited her seat assignment to defendant, through its agents, servants and employees on board said flight, said agents, servants and employees carelessly, recklessly and negligently failed and refused to permit plaintiff, ALICE MEYERS, to occupy said

seat and, instead, demanded that said plaintiff remove herself from said aircraft.

12. That, although plaintiff, ALICE MEYERS, exhibited her seat assignment to the defendant, through its agents, servants and employees on board said aircraft, defendants, its agents, servants and employees, called the local police and thereafter caused the following events to flow from their negligence, aforesaid: plaintiff was removed bodily from the aircraft, under arrest, and was thereafter imprisoned; plaintiff, ALICE MEYERS, was required to return from New York to the State of Florida for trial of the criminal charges and to retain an attorney, therefor.

13. That, after trial of said criminal charge, the Criminal Court directed a verdict of acquittal on April 8, 1971. The action was instituted on May 4, 1973, and service of the Summons & Complaint was completed on May 7, 1973.

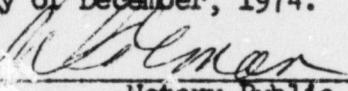
14. That, the instant motion, brought on by defendant is the second such motion to dismiss the certain causes of action, herein pleaded, by the plaintiff, ALICE MEYERS. A prior motion for the relief requested, herein, was denied by this Court, by order dated April 12, 1974.



LAWRENCE WALDMAN

Sworn to before me this 9TH

day of December, 1974.


Notary Public

ANNETTE KOLMAN
Notary Public, State of New York
No. 41-1473215
Qualified in Queens County
Commission Expires March 30, 1975

AFFIDAVIT OF LAWRENCE WALDMAN IN OPPOSITION TO MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALICE MEYERS, RAYMOND MEYERS, KIM MEYERS, an infant by RAYMOND MEYERS, her father and natural guardian, JAMIE MEYERS, an infant by RAYMOND MEYERS, her father and natural guardian, JONI EPSTEIN, an infant by SAMUEL EPSTEIN, her father and natural guardian, and ROBIN SIEGEL, an infant by BERNARD SIEGEL, her father and natural guardian,

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AFFIDAVIT IN OPPOSITION
TO DEFENDANT'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT

Plaintiffs,

-against-

NATIONAL AIRLINES, INC.,

Defendant.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

LAWRENCE WALDMAN, being duly sworn, deposes and says:

1. That, I am an attorney-at-law and the attorney for all of the plaintiffs, herein.
2. That, I am fully familiar with all of the pleadings and proceedings heretofore had herein.
3. That, I make this affidavit in opposition to the motion made by defendant, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, for partial summary judgment dismissing the first, second, third and fourth causes of action of the amended complaint, herein. All of the causes of action, attacked by this motion are brought on behalf of plaintiff, ALICE MEYERS, and said causes of action seek the following relief:

- (a) the first cause of action is cast in negligence and seeks compensatory damages in the sum of \$250,000.00;
- (b) the second cause of action seeks punitive damages for gross negligence in the sum of \$10,000,000.00;
- (c) the third cause of action is cast in breach of the implied warranty of safe passage and seeks compensatory damages in the sum of \$250,000.00; and
- (d) the fourth cause of action seeks punitive damages for wilful breach of the implied warranty of safe passage and seeks punitive damages in the sum of \$10,000,000.00.

4. That, the "WHEREFORE" clause of the said amended complaint, however, demonstrates that plaintiff, ALICE MEYERS, seeks one single judgment for compensatory damages of \$250,000.00 and one single judgment for punitive damages of \$10,000,000.00. The amounts claimed are not cumulative.

5. That, as alleged in the amended complaint and admitted in the answer, defendant is a scheduled airline carrier, which operated, managed and controlled, on January 2, 1971, a terminal at Miami International Airline and owned, operated, managed and controlled a certain aircraft, known as Flight #98, scheduled to depart said terminal at 4:30 p.m. of said date. (See paragraphs of the amended complaint: SEVENTH, FOURTEENTH, SIXTEENTH, SEVENTEENTH, EIGHTEENTH, FORTY-FOURTH and FORTY-FIFTH)

6. That, as alleged in the amended complaint and admitted in the answer, plaintiff, ALICE MEYERS, had purchased an airline passage ticket which contained a reservation for her to depart Miami International Airport for John

F. Kennedy International Airport in New York City on January 2, 1971, at 4:30 p.m. on Flight #98. (See paragraphs of the amended complaint: FORTY-FIRST, FORTY-SECOND and FORTY-FOURTH)

7. That, as alleged in the amended complaint and admitted in the answer, defendant established, provided and maintained certain procedures, rules and regulations governing the conduct of its agents, servants and employees and the passengers boarding defendant's airplanes, instructed its agents, servants and employees in same and required said agents, servants and employees at Miami International Airport to follow same. (See paragraphs of the amended complaint: TWENTY-FIRST, TWENTY-THIRD, TWENTY-FOURTH, TWENTY-FIFTH, TWENTY-SIXTH and TWENTY-EIGHTH)

8. That, plaintiff alleges, and defendant denies any knowledge or information sufficient to form a belief, that on at least two separate occasions called defendant's terminal at Miami International Airport to confirm her said reservation for Flight #98 scheduled to depart Miami International Airport at 4:30 p.m. on January 2, 1971. (See paragraphs of the amended complaint: FORTY-EIGHTH, FORTY-NINTH and FIFTIETH)

9. That, plaintiff alleges, and defendant denies any knowledge or information sufficient to form a belief, that plaintiff, ALICE MEYERS, checked in at or about 2:15 p.m. on January 2, 1971, at defendant's terminal facilities at Miami International Airport, presented her ticket and was assigned a specific seat on defendant's Flight #98 scheduled to depart at 4:30 p.m. on said date. (See paragraphs of the amended complaint: FIFTY-FIRST through FIFTY-FOURTH)

10. That, plaintiff alleges, and defendant tacitly admits, that plaintiff boarded said aircraft. (See paragraphs of the amended complaint: FIFTY-FIFTH; and of the answer, FIFTH)

11. That, plaintiff alleges that she legally boarded said aircraft pursuant to the directions of defendant and that she was legally present thereon. (See paragraphs of the amended complaint: FIFTY-SIXTH and FIFTY-SEVENTH)

12. That, plaintiff alleges that upon boarding the aircraft, plaintiff found that there was another person seated in the seat which had been specifically assigned to her for this said Flight and there were no other seats available on said aircraft. (See paragraphs of the amended complaint: FIFTY-EIGHTH and FIFTY-NINTH)

13. That, defendant admits that a person other than plaintiff was seated in the seat plaintiff claimed to be hers and that there were no seats on said aircraft available for plaintiff (See paragraphs of answer: VII and VIII) and tacitly admits that its agents, servants and employees on board said aircraft were so notified. (See paragraph of answer: IX).

14. That, plaintiff alleges that she exhibited her seat assignment "receipt" to defendant; that although requested to by the agent, servant or employee of defendant to produce a similar "receipt", the occupant of plaintiff's assigned seat could not produce same and that plaintiff requested defendant, its agents, servants and employees on board the aircraft, to permit her to occupy said seat. (See paragraphs of the amended complaint: SIXTY-FIRST through SIXTY-FIFTH)

15. That, plaintiff alleges that the defendant failed and refused to comply with her repeated requests to honor her specific seat assignment and instead, repeatedly ordered plaintiff to debark which plaintiff refused to do, (See paragraphs of the amended complaint: "SIXTY-SIXTY" through "SEVENTY-FIRST") and defendant admits that it did not seat plaintiff (See paragraph of answer: "XII") and that it requested plaintiff to debark (See paragraph of answer: "XIII").

16. That, plaintiff alleges that she was, by reason of the careless, reckless and negligent failure of defendant, to honor her confirmed reservation and her specific seat assignment, carelessly, recklessly and negligently ejected from defendant's aircraft (see paragraphs "SEVENTY-SECOND" and "SEVENTY-EIGHTH"), which defendant denies (see paragraph of answer: "XVII").

Query: Can defendant move, on the one hand, to allege that this was a wilfull tort, and, on the other hand, deny it ever occurred?

17. That, plaintiff alleges and defendant admits (see paragraphs of answer: "XVIII" and "XIX") that defendant requested the assistance of the police in their effort to eject the plaintiff and that this was a careless, reckless and negligent act (see paragraph of amended complaint: "SEVENTY-THIRD")

18. That, plaintiff alleges and defendant admits (see paragraphs of answer: "XVIII" and "XIX") that defendant requested the assistance and did receive the assistance of the police in their careless, reckless and negligent ejection of plaintiff from said aircraft (see paragraphs of complaint: "SEVENTY-THIRD", "SEVENTY-FOURTH" and "SEVENTY-EIGHTH").

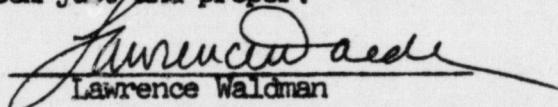
19. That, plaintiff alleges that defendant carelessly, recklessly and negligently caused her to be arrested. (See paragraphs of amended complaint "SEVENTY-FIFTH", "SEVENTY-SIXTH", and "SEVENTY-EIGHTH").

20. That, plaintiff alleges that all of the foregoing acts were in violation of the rules and regulations of defendant governing the conduct of its employees in connection with the boarding of its aircraft by fare-paying passengers. (See paragraphs of amended complaint: "SEVENTY-SEVENTH" and "SEVENTY-EIGHTH")

21. That, defendant, in the instant motion, seeks to color the gravamen of the complaint by taking paragraphs out of context. Were it not for the initial careless, reckless and negligent act of defendant in failing and refusing to honor its confirmed reservation and the specific seat assignment it issued, none of the acts alleged in the complaint would have taken place and but for that, there would have been no injuries, no damages, no abuse, no humiliation, no deprivation of plaintiff's right to travel upon defendant's aircraft, and, lastly, no instant lawsuit.

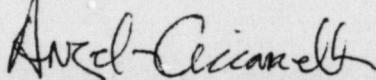
22. That, submitted, herewith, is a memorandum of law, amply demonstrating the inapplicability of defendant's memorandum of law, which, in no manner differentiates a wilfull tort from an act of negligence, and that, as a matter of law, sustains the validity of each of the four causes of action pleaded in the amended complaint.

WHEREFORE, your deponent respectfully requests that the instant motion be, in all respects, denied, and that the plaintiff have such other and further relief as to this Court may seem just and proper.


Lawrence Waldman

Sworn to before me this

9th day of December, 1974


Angel Ciccarelli

REPLY AFFIDAVIT OF WILLIAM J. JUNKERMAN
UNITED STATES DISTRICT COURT

40a

SOUTHERN DISTRICT OF NEW YORK

..... x

ALICE MEYERS, RAYMOND MEYERS, KIM : SUR
MEYERS, an infant by RAYMOND MEYERS,
her father and natural guardian, : REPLY AFFIDAVIT
JAMIE MEYERS, an infant by RAYMOND
MEYERS, her father and natural : 73 Civ. 1987 RO
guardian; JONI EPSTEIN, an infant
by SAMUEL EPSTEIN, her father and :
natural guardian, and ROBIN SIEGEL,
an infant by BERNARD SIEGEL, her :
father and natural guardian,

Plaintiffs, : TRIABLE
-against- : ISSUE
NATIONAL AIRLINES, INC., : OF FACT
Defendant. : &
..... x

STATE OF NEW YORK) IN SUFF
: ss.: AFFID
COUNTY OF NEW YORK)

WILLIAM J. JUNKERMAN, being duly sworn, deposes
and says:

I am an attorney-at-law and a member of the firm
of Haight, Gardner, Poor & Havens, attorneys for defendant
National Airlines, Inc., and I am familiar with all of the
pleadings and proceedings heretofore had herein. I make
this affidavit in support of defendant's motion, pursuant
to Rule 56(b) of the Federal Rules of Civil Procedure, for
partial summary judgment dismissing plaintiff Alice Meyers'
first, second, third, and fourth causes of action, and in
reply to plaintiffs' memorandum of law and to the affidavit
of the plaintiffs' attorney dated December 9, 1974, sub-
mitted in opposition to defendant's motion.

The arguments made in plaintiffs' opposition
papers are completely off-target. The reason for this is

found in the initial sentence of Point I in plaintiffs' memorandum of law: 41a

"This motion, while called a motion for partial summary judgment pursuant to Rule 56(b), is similar to a motion, for judgment on the pleadings or a motion to dismiss the complaint for failure to state a cause of action and is brought pursuant to Rule 3211 CPLR."

Plaintiffs base the bulk of their arguments upon this assertion. Needless to say, this assertion is patently wrong. If analogous New York procedure needs to be found, then this motion for partial summary judgment under Fed. R. Civ. P. 56(b) would be most similar to a motion for partial summary judgment under CPLR 3212(e), not CPLR 3211. (Plaintiffs' reason for making the erroneous comparison is unclear, for there are enough applicable federal decisions to provide guidance.) In any event, as a result of the inaccuracy of this basic assertion of the plaintiffs, the state court decisions cited and quoted in the plaintiffs' memorandum of law in Points I, II, and III are completely irrelevant to this motion.

In the remaining points in plaintiffs' memorandum the plaintiffs' attorney mistakes the entire thrust of defendant's legal argument in support of this motion. The defendant is not saying that it does not have a duty to passengers or that it cannot be held liable for negligence or breach of contract in certain circumstances. Furthermore, there may even be occasions when it is permissible for a plaintiff to characterize an action as being for negligence or breach of contract even though the underlying facts constituted an intentional tort against that plaintiff. But plaintiffs do not focus on the crucial issue: What statute of limitations applies to such actions? Defendant's point, set forth at length in its memorandum of law, is that the statute of limitations applicable to intentional torts is

applicable to causes of action that sound in intentional tort even though the actions may be framed in negligence or contract. Plaintiffs never quite deal with this point in their opposition papers. The decisional law described in defendant's memorandum demonstrates that, in determining the nature of a cause of action in order to find out which statute of limitations is applicable, the various gravamen of actions such as plaintiff Alice Meyers' first four causes sound in intentional tort, no matter how they are labeled or characterized by the plaintiffs. As is described more fully in my affidavit of November 4th, in support of this motion, the language of the plaintiffs' complaint and Mrs. Meyers' testimony at her deposition clearly show that her claims, however characterized, were in fact claims for intentional torts in that the compensatory and punitive damages being alleged arose, not out of the fact that she was unable to fly on Flight 98, but out of the fact that she was forcibly removed from the aircraft, arrested, and jailed. As demonstrated by the decisions in defendant's memorandum of law, this requires the conclusion that, for the purpose of determining the applicable statute of limitations, New York courts would unquestionably find that the gravamen of plaintiff Alice Meyers' first, second, third, and fourth causes of action sound in intentional tort, even though these actions may be framed in contract or negligence. In addition, the allegations in those causes of action clearly violate the aforementioned order of this Court of April 10, 1974, which ordered the plaintiffs to serve a new complaint containing "no allegation of or reference to damages to persons over twenty-one (21) years of age allegedly resulting, directly or derivatively, from intentional torts." WHEREFORE, I respectfully request that National's motion for partial summary judgment dismissing plaintiff

43a

Alice Meyers' first, second, third, and fourth causes of action be in all respects granted, with costs, upon the ground that these causes of action are barred by the applicable New York statute of limitations, CPLR 215.3, and by this Court's Order of April 10, 1974.

WILLIAM J. JUNKERMAN

William J. Junkerman

Sworn to before me this

11th day of December, 1974.

BETTY G. YANOK
Notary Public, State of New York
No. 24-437949

Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1975

Notary Public

SUR REPLY AFFIDAVIT OF LAWRENCE WALDMAN
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALICE MEYERS, RAYMOND MEYERS, KIM MEYERS, an infant by RAYMOND MEYERS, her father and natural guardian, JAMIE MEYERS, an infant by RAYMOND MEYERS, her father and natural guardian, JONI EPSTEIN, an infant by SAMUEL EPSTEIN, her father and natural guardian, and ROBIN SIEGEL, an infant by BERNARD SIEGEL, her father and natural guardian,

Index #73 Civ. 1987 RO

SUR-REPLY AFFIDAVIT

Plaintiffs,

-against-

NATIONAL AIRLINES, INC.,

Defendant.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

LAWRENCE WALDMAN, being duly sworn, deposes and says:

1. That, I am an attorney at law, and the attorney for the plaintiffs, herein. I am fully familiar with all of the facts and circumstances, herein set forth.

2. That, I make this affidavit, in the form of a sur-reply affidavit, in opposition to the reply affidavit of William Junkerman, Esq., sworn to this 11th day of December, 1974.

3. That, defendant now takes the position that its Rule 56 motion is similar in nature to a motion pursuant to Rule 3212 CPLR.

4. That, both Rule 56(e) of the Federal Rules of Civil Procedure and Rule 3212(b) CPLR require that such a motion be supported by:

the affidavit of a person having knowledge of the facts which shall recite all the material facts and it must show that the cause of action has no merit;

the motion may be granted only if the Court would, as a matter of law, direct judgment in favor of the moving party;

the motion must be denied if any party shall show facts sufficient to require a trial of any issue of fact . . .

5. That, applying this proscription to the instant motion, we find that the moving papers lack the affidavit of any person having knowledge of what transpired at the terminal of the defendant or on its aircraft on January 2, 1971. Surely, the affidavit of defendant's attorney cannot be considered to have any probative value, in this regard.

6. That, the law is clear that the affidavit of an attorney who has no personal knowledge of the facts has no probative value and must be disregarded. (Israelson v. Rubin, 20 A.D. 2d 668, 247 N.Y.S. 2d 85, affirmed 14 N.Y. 2d 887, 252 N.Y. S. 2d 90; Yancy v. Gambee, 5 Misc. 2d 743, 283 N.Y.S. 2d 311)

7. That, the conclusory allegations and hearsay statements of defendant's attorney as to the import of the deposition of plaintiff, Alice Meyers, do not constitute evidence. (Central School Dist. v. Cohen, 60 Misc. 2d 337, 302 N.Y.S. 2d 398) The party seeking summary judgment has the burden of producing evidence as upon a trial (Oxford Paper Co. v. S.M. Liquidation Co., 45 Misc. 2d 612, 257 N.Y.S. 2d 395) and such evidentiary facts must establish his defense to entitle him to judgment as a matter of law (First Trust & Deposit Co. v. W.W. Conde Hardware Co., 47 Misc. 2d 338, 262 N.Y.S. 2d 565).

8. That, the reply affidavit of William J. Junkerman, Esq., repeats and reiterates one theme: that no matter how many acts of negligent conduct on the part of defendant are spelled out in the amended complaint, he has the right to characterize these acts, as intentional torts. Nowhere in the moving papers or in the defendant's memorandum of law does there appear any case to substantiate the position, thus taken, that the negligent acts so attributed to defendant, are, as a matter of law, solely and wholly, intentional torts.

9. There is no doubt nor contest as to the applicable period of limitations to either action, but unless this Court finds each and every act ascribed to defendant in the amended complaint was an intentional tort, as a matter of law and could not, as a matter of law, support a cause of action in negligence, then this motion must be denied.

10. It is to be noted, too, that there is no denial of any probative value of any of the allegations of the amended complaint. Lacking any such evidence, this motion, as a matter of law, may not stand.

11. That, it is respectfully submitted that defendant has shifted its ground on this motion. Under Rule 3212, CPLR, the motion must be based on factual allegations having the force of conclusive proof. There is no such conclusive proof, much less any evidence having probative value in support of this motion.

12. That, the allegations contained in the amended complaint of plaintiff, Alice Meyers, have been accepted as truthful on this motion. They may not be altered in their evidentiary value by conclusory allegations or the affidavit of an attorney having no personal knowledge of the facts.

47a

WHEREFORE, your defendant respectfully requests that the instant motion be in all respects denied and that the plaintiff have such other and further relief as to this Court may seem just and proper.

 LAWRENCE WALDMAN

Sworn to before me this 11th
day of December, 1974.

 Notary Public

ANGELA CICCARELLI
NOTARY PUBLIC - State of New York
No. 31-5696412 - New York County
Term Expires March 30, 1976

AMENDED COMPLAINT

DISTRICT COURT OF THE UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF NEW YORK

48a

ALICE MEYERS, RAYMOND MEYERS, KIM MEYERS, an infant by RAYMOND MEYERS, her father and natural guardian, JAMIE MEYERS, an infant by RAYMOND MEYERS, her father and natural guardian, JOAN EPSTEIN, an infant by SAMUEL EPSTEIN, her father and natural guardian, and ROBIN SIEGAL, an infant by BERNARD SIEGAL, her father and natural guardian,

**AMENDED
COMPLAINT**

Plaintiffs,

(Pursuant to
order of this
Court dated
4-12-74)

-against-

NATIONAL AIRLINES,

73 Civ. 1987RO

Defendant.

Plaintiffs, by LAWRENCE WALDMAN, their attorney, as and for their complaint, allege upon information and belief, as follows:

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ALICE MEYERS**

FIRST: That, at all times herein mentioned, plaintiff, Alice Meyers, was a resident of the County of Nassau, State of New York.

SECOND: That, at all times herein mentioned, plaintiff, Alice Meyers, was married to plaintiff, Raymond Meyers, and said plaintiffs resided together, as husband and wife, at 851 Farmwood Avenue, North Woodmere, County of Nassau, State of New York.

THIRD: That, at all times herein mentioned, said plaintiffs were over the age of twenty-one years.

FOURTH: That, at all times herein mentioned, defendant was a corporation organized and existing under the laws of the State of Florida.

FIFTH: That, by reason of the diversity of citizenship, and by reason of the fact that this lawsuit seeks damages in the sum in excess of \$10,000.00, exclusive of costs, interest and disbursements, this Court has jurisdiction, thereof.

SIXTH: That, at all times herein mentioned, defendant was licensed to do business in the State of New York.

SEVENTH: That, at all times herein mentioned, defendant was a "scheduled airline carrier".

EIGHTH: That, at all times herein mentioned, said defendant maintained and owned, operated, managed and controlled facilities for the sale of airline tickets in the State of New York.

NINTH: That, at all times herein mentioned, defendant maintained and used a terminal at John F. Kennedy International Airport in the County of Queens, City and State of New York.

TENTH: That, at all times herein mentioned, defendant maintained and used the aforesaid terminal in connection with the conduct of its business as a scheduled airline carrier.

ELEVENTH: That, at all times herein mentioned, defendant carried on and conducted business within the State of New York.

TWELFTH: That, during the period of time: November 1, 1970, through January 30, 1971, defendant sold tickets within the State of New York for passage upon its airplanes.

THIRTEENTH: That, at all times herein mentioned, defendant was a corporation organized and existing under the laws of the State of New York.

FOURTEENTH: That, at all times herein mentioned, defendant was licensed to do business in the State of Florida.

FIFTEENTH: That, at all times herein mentioned, defendant maintained and owned, operated, managed and controlled facilities for the sale of airline tickets in the State of Florida.

SIXTEENTH: That, at all times herein mentioned, defendant maintained and used a terminal at Miami International Airport, in the City of Miami, County of Dade, and State of Florida.

SEVENTEENTH: That, at all times herein mentioned, defendant maintained and used the aforesaid terminal in connection with the conduct of its business as a scheduled airline carrier.

EIGHTEENTH: That, at all times herein mentioned, defendant carried on and conducted business within the State of Florida.

NINETEENTH: That, at all times herein mentioned, defendant sold tickets within the State of Florida for passage upon its airplanes.

TWENTIETH: That, at all times herein mentioned, defendant was engaged in interstate commerce.

TWENTY-FIRST: That, at all times herein mentioned, defendant established, provided and maintained certain procedures, rules and regulations governing the conduct of its agents, servants or employees and the passengers boarding defendant's airplanes.

TWENTY-SECOND: That, at all times herein mentioned, these said certain procedures, rules and regulations were in effect at the passenger terminals maintained and used by defendant at John F. Kennedy International Airport and Miami International Airport.

TWENTY-THIRD: That, at all times herein mentioned, defendant instructed its agents, servants and employees in these said certain procedures, rules and regulations.

TWENTY-FOURTH: That, at all times herein mentioned, the agents, servants and employees of defendant were required to follow the said certain procedures, rules and regulations governing the conduct of defendant's agents, servants or employees, and the passengers boarding defendant's airplanes.

TWENTY-FIFTH: That, at all times herein mentioned, the said agents, servants and employees of defendant were required to follow the said certain procedures, rules and regulations governing the conduct of defendant's agents, servants or employees, and the passengers boarding defendant's airplanes at John F. Kennedy International Airport.

TWENTY-SIXTH: That, at all times herein mentioned, the said agents, servants and employees of defendant were required to follow the said certain procedures, rules and regulations governing the conduct of defendant's agents, servants or employees, and the passengers boarding defendant's airplanes at Miami International Airport.

TWENTY-SEVENTH: That, at all times herein mentioned, the said certain procedures, rules and regulations governing the conduct of defendant's agents, servants and employees and the passengers boarding defendant's airplanes were in written form.

TWENTY-EIGHTH: That, at all times herein mentioned, the agents, servants or employees of defendant were required to have received oral instruction in the said certain procedures, rules and regulations governing the conduct of defendant's agents, servants and employees and the passengers boarding defendant's airplanes.

TWENTY-NINTH: That, at all times herein mentioned, the agents, servants and employees of defendant were required to have received a copy of the written said certain procedures, rules and regulations governing the conduct of defendant's agents, servants and employees, and the passengers boarding defendant's airplanes.

THIRTIETH: That, on or about the 9th day of November, 1970, plaintiff, Alice Meyers, purchased, for a good and valuable consideration, a certain airline passage ticket.

THIRTY-FIRST: That, at all times herein mentioned, the sale of tickets for passage on its airline was conducted, in part, by certain authorized travel agencies, on behalf of defendant.

THIRTY-SECOND: That, at all times herein mentioned, said travel agencies, were authorized and empowered by said defendant to sell tickets and reserve passage on the scheduled airline flights of said defendant.

THIRTY-THIRD: That, at all times herein mentioned, Reliable Travel Bureau, Inc., of Cedarhurst, New York, was such a travel agency, authorized and empowered by said defendant to sell tickets and reserve passage on scheduled airline flights of said defendant.

THIRTY-FOURTH: That plaintiff, Alice Meyers, purchased this said ticket through Reliable Travel Bureau, Inc., Cedarhurst, Long Island, New York.

THIRTY-FIFTH: That, in the sale of such ticket, Reliable Travel Bureau, Inc., acted as the agent for and on behalf of defendant, National Airlines.

THIRTY-SIXTH: That, the said airline passage ticket so purchased by plaintiff, Alice Meyers, was numbered as follows: 010-494368951-3.

THIRTY-SEVENTH: That, said airline passage ticket was purchased for passage on airplanes owned, operated, managed and controlled by defendant.

THIRTY-EIGHTH: That, this said airline passage ticket was purchased for a round-trip airplane fare, commencing in John F. Kennedy International Airport, in the County of Queens, City and State of New York, and having a destination of Miami International Airport, County of Dade, City of Miami, State of Florida, and said airline passage ticket, as part of its "round-trip" feature provided airline passage from Miami International Airport, County of Dade, City of Miami, State of Florida, to John F. Kennedy International Airport, County of Queens, City and State of New York.

THIRTY-NINTH: That, said airline passage ticket contained a reservation for plaintiff, Alice Meyers, to leave John F. Kennedy International Airport on December 18, 1970, at 9:55 a.m., Flight #NA81.

FORTIETH: That, said airline passage ticket provided that Miami International Airport, County of Dade, City of Miami, State of Florida, was the destination point.

FORTY-FIRST: That, said airline passage ticket contained a reservation for plaintiff, Alice Meyers, to leave Miami International Airport on January 2, 1971, at 4:30 p.m., Flight #NA98, as a return trip.

FORTY-SECOND: That, this said airline passage ticket provided that John F. Kennedy International Airport, County of Queens, City and State of New York was the destination point.

FORTY-THIRD: That, the use of said airline passage ticket required that in order to board the said airplanes, owned, operated, managed and controlled by defendant, plaintiff was required to make use of the terminals maintained and used by defendant at John F. Kennedy International Airport and Miami International Airport.

FORTY-FOURTH: That, defendant, on or about the 2nd day of January, 1971, owned, operated, managed, ~~and~~ controlled a certain airplane known as Flight #98, which was scheduled to depart Miami International Airport for John F. Kennedy International Airport on January 2, 1971, at 4:30 in the afternoon.

FORTY-FIFTH: That, this said airplane was owned, operated, managed, and controlled by defendant, and, on behalf of said defendant, was owned, operated, managed, and controlled by the agents, servants, and employees of said defendant.

FORTY-SIXTH: That, on or about the 9th day of November, 1970, plaintiff, at the time of the purchase of her airline passage ticket, reserved space for herself on said Flight #98, scheduled to depart Miami International Airport for John F. Kennedy International Airport on January 2, 1971, at 4:30 in the afternoon.

FORTY-SEVENTH: That, the airline passage ticket received by plaintiff contained the notation that said ticket was for passage on said Flight #98, scheduled to depart Miami International Airport for John F. Kennedy International Airport on January 2, 1971, at 4:30 in the afternoon.

FORTY-EIGHTH: That, on or about the 18th day of December, 1970, plaintiff notified defendant that she would depart Miami International Airport on said Flight #98 at 4:30 p.m. on January 2, 1971, and confirmed her reservation for space on said flight.

FORTY-NINTH: That, on or about the 31st day of December, 1970, and approximately 72 hours prior to 4:30 p.m. of January 2, 1971, plaintiff again notified defendant that she would depart Miami International Airport on said Flight #98 at 4:30 p.m. on January 2, 1971, and confirmed her reservation for space on said flight.

FIFTIETH: That, on each of such occasions, plaintiff confirmed her reservations at the offices and terminal of defendant at Miami International Airport, City of Miami, County of Dade, State of Florida.

FIFTY-FIRST: That, on January 2, 1971, at about 2:15 in the afternoon, plaintiff "checked in" at the terminal owned, operated, managed and controlled by defendant at Miami International Airport.

FIFTY-SECOND: That, at said time and place, plaintiff presented her airline passage ticket and requested a seat reservation.

FIFTY-THIRD: That, this said request was made in person and to those agents, servants or employees of defendant charged by defendant with the duty of conducting to and boarding passengers holding airline passage tickets onto the airplanes owned, operated, managed and controlled by defendant.

FIFTY-FOURTH: That, at said time and place and in response to said request, plaintiff selected and was assigned a special seat on defendant's Flight #98, aforesaid.

FIFTY-FIFTH: That, at about 4:15 p.m. plaintiff boarded said airplane, known as and by Flight #98.

FIFTY-SIXTH: That, plaintiff legally boarded said airplane, pursuant to the directions of the defendant.

FIFTY-SEVENTH: That, pursuant to the direction of the defendant, plaintiff, upon boarding said airplane, was legally present, thereon.

FIFTY-EIGHTH: That, upon boarding said airplane, plaintiff discovered and learned, for the first time, that a person, other than herself, was seated in the specific seat which had been reserved by and assigned to her by the agents, servants, or employees of the defendant.

FIFTY-NINTH: That, at said time and place, plaintiff discovered and learned, for the first time, that there were no seats available for her upon said airplane.

SIXTIETH: That, plaintiff notified said defendant, through its agents, servants, or employees, that a stranger, other than herself, was seated in the specific seat which had been reserved by and assigned to her.

SIXTY-FIRST: That, plaintiff exhibited to the agents, servants, or employees of defendant on board the airplane, the "receipt" for said specific seat, which had been given to her by the agents, servants or employees of defendant at the time of her arrival and "checking in" at defendant's terminal.

SIXTY-SECOND: That, the agent, servant, or employee of the defendant on board the airplane, in the presence of the plaintiff, asked the said third person to produce her receipt for said specific seat.

SIXTH-THIRD: That, said third person could not and did not produce any such receipt showing a reservation for or assignment to said specific seat.

SIXTY-FOURTH: That, plaintiff then requested the defendant, through its agents, servants, and employees on board said airplane, that they permit her to occupy the said specific seat to which she had been assigned, and for which she held a reservation.

SIXTY-FIFTH: That, numerous other agents, servants, and employees of defendant were present on board of said airplane at the time.

SIXTY-SIXTH: That, the defendant, its agents, servants, and employee, refused to comply with the request of plaintiff, refused to honor the specific seat reservation of the plaintiff, and refused to take any action of any kind, nature or description to secure a seat on said airplane for plaintiff.

SIXTY-SEVENTH: That, the defendant, its agents, servants, and employees, did then direct, demand and order that plaintiff debark from the said airplane.

SIXTY-EIGHTH: That, when plaintiff again requested that she be given the specific seat which she had reserved and which had been assigned to her by the defendant, its agents, servants and employees, the said defendant, its agents, servants and employees, did repeat their order, direction and demand that plaintiff debark from said airplane.

SIXTY-NINTH: That, numerous other agents, servants, and employees of defendant were present on board said airplane at the time.

SEVENTIETH: That, said plaintiff refused to leave the said airplane and requested again that the defendant, its agents, servants and employees, honor her seat reservation and secure for her the specific seat which she had reserved and which had been assigned to her by the defendant, its agents, servants, and employees, or any seat upon said airplane.

SEVENTY-FIRST: That, numerous other agents, servants and employees of defendant were present on board said airplane at the time.

SEVENTY-SECOND: That, said defendant, through its agents, servants and employees violently, and with force of arms, seized and lay hold of plaintiff, and attempted to forcibly eject plaintiff from said airplane.

SEVENTY-THIRD: That, the said defendant, its agents, servants and employees, did then call upon, and request, a police officer of the Metropolitan Police Department of Dade County to enter upon said airplane and aid them in forcibly ejecting the plaintiff from said airplane.

SEVENTY-FOURTH: That, the said police officer did respond and, under the direction and control of the agents, servants, and employees of the defendant did aid and assist the agents, servants, and employees of the defendant in forcibly ejecting plaintiff from the airplane.

SEVENTY-FIFTH: That, the defendant, its agents, servants, and employees did then request, demand and insist upon the arrest of the plaintiff by said police officer.

SEVENTY-SIXTH: That, the defendant, its agents, servants, and employees, caused plaintiff to be arrested.

SEVENTY-SEVENTH: That, the acts of the defendant, its agents, servants and employees were in violation of the rules and regulations of the defendant governing the conduct of its employees in connection with the boarding of its airplanes by its fare-paying passengers.

SEVENTY-EIGHTH: That, the aforesaid acts of defendant were occasioned wholly and solely through the carelessness, recklessness, and negligence of the defendant, with no fault or lack of care on the part of the plaintiff, Alice Meyers, contributing thereto, in that said defendant operated, managed, directed and controlled their aforesaid boarding operations in a careless, reckless, and negligent manner; in that said defendant, its agents, servants, and employees, failed and refused to obey defendant's own instructions to its agents, servants, and employees for boarding procedures; and in that said defendant operated, managed, directed and controlled the use of its said aircraft by its passengers in so careless, reckless, and negligent a manner as to cause the injuries and damages complained of herein.

SEVENTY-NINTH: That, by reason of the negligence of the defendant, herein alleged, plaintiff was handcuffed and was forcibly dragged, while handcuffed, throughout the airline terminal at Miami International Airport, in full view of the multitudes of people there.

EIGHTIETH: That, by reason of the negligence of the defendant, herein alleged, criminal charges were levied against the plaintiff, Alice Meyers.

EIGHTY-FIRST: That, by reason of the negligence of the defendant, herein alleged, plaintiff was deprived of her liberty, and the said police took plaintiff to the police station in Miami, and there entered her on the records as under arrest on a charge of disorderly conduct and caused her fingerprints and photograph to be taken in accord with usual police practice of the arrest of criminals, and held her on said charge for a period of three hours, when she was released on bail as any common criminal.

EIGHTY-SECOND: That, by reason of the negligence of the defendant, herein alleged, plaintiff was caused to be incarcerated, in all, a total of three hours, in a cell with prostitutes, drug-addicts, and various and sundry vicious criminals.

EIGHTY-THIRD: That, by reason of the negligence of the defendant, herein alleged, plaintiff, Alice Meyers, was required to post bail, retain legal counsel and to return to the State of Florida for trial.

EIGHTY-FOURTH: That, as a result of the foregoing, plaintiff was compelled to and did expend large sums of money for bail, legal counsel, transportation, living expenses and other expenses associated with her imprisonment and trial and incurred a loss of earnings, by reason thereof.

EIGHTY-FIFTH: That, by reason of the negligence of the defendant, hereinabove alleged, plaintiff became sick, sore, lame and

disabled; sustained severe and serious personal injuries to various and diverse parts of her body; was compelled to and did undergo extensive medical care and attention for said injuries and was compelled to and did expend large sums of money therefor; and was otherwise incapacitated from the normal pursuits of life.

EIGHTY-SIXTH: That, by reason of the negligence of defendant, hereinabove alleged, plaintiff was greatly humiliated, and suffered great mental and bodily distress, embarrassment, scorn, and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally, and emotionally, as well as in character and reputation.

EIGHTY-SEVENTH: That, the aforesaid injuries, emotional, mental and physical, and the damages incurred by the plaintiff were occasioned wholly and solely through the carelessness, recklessness, and negligence of the defendant, with no fault or lack of care on the part of the plaintiff, Alice Meyers, contributing thereto, in that said defendant operated, managed, directed and controlled their aforesaid boarding operation in a careless, reckless and negligent manner; in that said defendant, its agents, servants, and employees, failed and refused to obey defendant's own instructions to its agents, servants and employees for boarding procedures; and in that said defendant operated, managed, directed and controlled the use of its said aircraft by its passengers in so careless, reckless and negligent a manner as to cause the injuries and damages complained of herein.

EIGHTY-EIGHTH: That, by reason of the negligence of the defendant, herein, its agents, servants and employees, as aforesaid, plaintiff, Alice Meyers, has sustained compensatory damages in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ALICE MEYERS.

EIGHTY-NINTH: That, plaintiff, Alice Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "FIRST" through "EIGHTY-SEVENTH" of the First Cause of Action with the same force and effect as if fully set forth, at length, herein.

NINTIETH: That, the acts of the defendant, its agents, servants and employees, as aforesaid, were wanton, vicious and malicious and constituted gross negligence.

NINETY-FIRST: That, by reason of the foregoing, plaintiff, Alice Meyers, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ALICE MEYERS

NINETY-SECOND: That, plaintiff, Alice Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "FIRST" through "EIGHTY-SEVENTH" of the First Cause of Action, with the same force and effect as if fully set forth, at length, herein.

NINETY-THIRD: That, at the time that said defendant, its agents, servants, and employees, offered its tickets for sale to the general public, for passage upon its aircraft, it impliedly warranted to the general public that it would render, in exchange for the purchase of a ticket, safe passage upon its aircraft.

NINETY-FOURTH: That, in reliance upon this implied warranty of safe passage upon its aircraft, plaintiff purchased passage for use upon an aircraft owned, operated, managed and controlled by defendant.

NINETY-FIFTH: That, the defendant, its agents, servants, and employees, breached the aforesaid implied warranty of safe passage, as aforesaid.

aforesaid, plaintiff, Alice Meyers, has suffered compensatory damages in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ALICE MEYERS

NINETY-SEVENTH: That, plaintiff, Alice Meyers, repeats, realleges, and reiterates each and every allegation contained in paragraphs "FIRST" through "EIGHTY-SEVENTH" of the First Cause of Action, with the same force and effect as if set forth at length, herein.

NINETY-EIGHTH: That, plaintiff, Alice Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "NINETY-THIRD" through "NINETY-FIFTH" of the Third Cause of Action, with the same force and effect as if set forth, at length, herein.

NINETY-NINTH: That, the breach of this said implied warranty was deliberate and calculated on the part of the defendant, its agents, servants and employees, to cause injury and damage to the plaintiff.

ONE HUNDREDTH: That, by reason of the foregoing, plaintiff, Alice Meyers, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ALICE MEYERS

ONE HUNDRED FIRST: That, plaintiff, Alice Meyers, repeats, realleges, and reiterates each and every allegation contained in paragraphs "FIRST" through "EIGHTY-SEVENTH" of the First Cause of Action, with the same force and effect as if set forth, at length, herein.

ONE HUNDRED SECOND: That, at the time of the purchase of her certain ticket, hereinabove referred to, plaintiff entered into an agreement with the defendant that upon compliance with all of the terms and conditions laid down by defendant, by the plaintiff, defendant would have available to the plaintiff, airline passage from Miami International Airport to John F. Kennedy International Airport, unless prevented to do so by an Act of God.

ONE HUNDRED THIRD: That, plaintiff fully complied with all of the terms and conditions for passage upon the aforesaid aircraft owned, operated, managed and controlled by the defendant.

ONE HUNDRED FOURTH: That, defendant, by its actions, as aforesaid, failed and refused to provide such passage upon its said aircraft, by the plaintiff, Alice Meyers.

ONE HUNDRED FIFTH: That, said actions, as aforesaid, on the part of the defendant, constituted a breach of its agreement with the plaintiff for the defendant to provide such passage.

ONE HUNDRED SIXTH: That, by reason of the breach of the agreement of passage, as aforesaid, by the defendant, plaintiff, Alice Meyers, has been damaged in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

AS AND FOR A SIXTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, RAYMOND MEYERS

ONE HUNDRED SEVENTH: That, plaintiff, Raymond Meyers, repeats realleges and reiterates each and every allegation contained in paragraphs "FIRST" through "EIGHTY-SEVENTH" of the First Cause of Action, with the same force and effect as if set forth, at length, herein.

ONE HUNDRED EIGHTH: That, plaintiff repeats, realleges and reiterates each and every allegation contained in paragraph "NINTIETH" of the Second Cause of Action, with the same force and effect as if set forth, at length, herein.

ONE HUNDRED NINTH: That plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs "NINETY-SECOND" through "NINETY FIFTH" of the Third Cause of Action, with the same force and effect as if set forth, at length, herein.

ONE HUNDRED TENTH: That, plaintiff repeats, realleges and reiterates each and every allegation contained in paragraph "NINETY-SEVENTH" through "NINETY NINTH" of the Fourth Cause of Action, herein, with the same force and effect as if set forth, at length, herein.

ONE HUNDRED ELEVENTH: That, plaintiff repeats, realleges and 63a reiterates each and every allegation contained in paragraphs "ONE HUNDRED-FIRST" through "ONE HUNDRED-FIFTH", of the Fifth Cause of Action, with the same force and effect as if set forth, at length, herein.

ONE HUNDRED TWELFTH: That, at all times herein mentioned, plaintiff, Raymond Meyers, was the husband of plaintiff, Alice Meyers, and, as such, was entitled to the services and society of his said wife, Alice Meyers.

ONE HUNDRED THIRTEENTH: That, as a result of the actions of the defendant, its agents, servants, and employees, as aforesaid, plaintiff, Raymond Meyers, was deprived of the services and society of his wife, plaintiff, Alice Meyers, and was caused to suffer great mental anguish.

ONE HUNDRED FOURTEENTH: That, as a result of the actions of the defendant, its agents, servants and employees, as aforesaid, plaintiff, Raymond Meyers, was caused to incur medical and other expenses.

ONE HUNDRED FIFTEENTH: That, by reason of the foregoing, plaintiff, Raymond Meyers, has been damaged in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

AS AND FOR A SEVENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ALICE MEYERS

ONE HUNDRED SIXTEENTH: That, plaintiff, Alice Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "FIRST" through "EIGHTY-SEVENTH" of the First Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED SEVENTEENTH: That, plaintiff, Alice Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "NINLTY-THIRD" through "NINETY-FIFTH" of the Third Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED EIGHTEENTH: That, plaintiff, Alice Meyers, repeats, realleges and reiterates each and every allegation contained in paragraph "NINETY-NINTH" of the Fourth Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED NINETEENTH: That, plaintiff, Alice Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED SECOND" through "ONE HUNDRED FIFTH" of the Fifth Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED TWENTIETH: That, defendant, by its actions, aforesaid, showed discrimination against plaintiff, Alice Meyers, and showed unlawful preference to other passengers.

ONE HUNDRED TWENTY-FIRST: That, defendant, by its actions, aforesaid, granted passengers who had made confirmed reservations later than plaintiff the right to board, be seated and travel upon the aforesaid flight.

ONE HUNDRED TWENTY-SECOND: That, defendant, by its action, aforesaid, granted passengers who had "checked in" and received seating tickets the right to board, be seated and travel upon the aforesaid flight.

ONE HUNDRED TWENTY-THIRD: That, defendant, by its actions, aforesaid, violated the spirit, intent and letter of 49 U.S.C. #1374(b).

ONE HUNDRED TWENTY-FOURTH: That, as a result of these said acts, as aforesaid, plaintiff was greatly humiliated, and suffered great mental and bodily distress, embarrassment, scorn and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally, and emotionally, as well as in character and reputation.

ONE HUNDRED TWENTY-FIFTH: That, by reason thereof, plaintiff, Alice Meyers, has suffered compensatory damage in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

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AS AND FOR AN EIGHTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ALICE MEYERS

ONE HUNDRED TWENTY-SIXTH: That, plaintiff, Alice Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED SIXTEENTH" through "ONE HUNDRED TWENTY-FOURTH" of the Seventh Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED TWENTY-SEVENTH: That, the aforesaid discrimination against the plaintiff and the unlawful preference granted to other passengers was deliberate and calculated on the part of the defendant, its agents, servants and employees to cause injury and damage to the plaintiff.

ONE HUNDRED TWENTY-EIGHTH: That, by reason of the foregoing, plaintiff, Alice Meyers, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A NINTH CAUSE OF ACTION ON
BEHALF OF PLAINTIFF, KIM MEYERS, AN
INFANT BY HER FATHER & NATURAL GUARDIAN,
RAYMOND MEYERS

ONE HUNDRED TWENTY-NINTH: That, plaintiff, Kim Meyers, is an infant over the age of fourteen years, to wit: seventeen years of age, having been born on the 13th day of September, 1956.

ONE HUNDRED THIRTIETH: That, plaintiff, Kim Meyers, resides at 851 Fanwood Avenue, North Woodmere, in the County of Nassau, State of New York, with her parents, plaintiff, Alice Meyers, and plaintiff, Raymond Meyers.

ONE HUNDRED THIRTY-FIRST: That, plaintiff, Kim Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "FIRST" through "TWENTY-NINTH" of this complaint with the same force and effect as if set forth, at length, herein.

ONE HUNDRED THIRTY-SECOND: That, on or about the 9th day of November, 1970, plaintiff, Alice Meyers, purchased, for a good and valuable consideration, a certain airline passage ticket for the use and benefit of plaintiff, Kim Meyers, her daughter.

ONE HUNDRED THIRTY-THIRD: That, plaintiff, Kim Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "THIRTY-FIRST" through "THIRTY-EIGHTH" of this complaint with the same force and effect as if set forth, at length, herein.

ONE HUNDRED THIRTY-FOURTH: That, said airline passage ticket contained a reservation for plaintiff, Kim Meyers, to leave John F. Kennedy International Airport on December 18, 1970, at 9:55 a.m., Flight #NA81.

ONE HUNDRED THIRTY-FIFTH: That, said airline passage ticket provided that Miami International Airport, County of Dade, City of Miami, State of Florida, was the destination point.

ONE HUNDRED THIRTY-SIXTH: That, said airline passage ticket contained a reservation for plaintiff, Kim Meyers, to leave Miami International Airport on January 2, 1971, at 4:30 p.m., Flight #NA98, as a return trip.

ONE HUNDRED THIRTY-SEVENTH: That, plaintiff, Kim Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "FORTY-SECOND" through "SEVENTY-FIRST" of this complaint with the same force and effect as if set forth, at length, herein.

ONE HUNDRED THIRTY-EIGHTH: That, plaintiff, Kim Meyers, was forcibly ejected from said aircraft and denied passage, thereon.

ONE HUNDRED THIRTY-NINTH: That, at the time that said defendant, its agents, servants and employees, offered its tickets for sale to the general public, for passage upon its aircraft, it impliedly warranted to the general public that it would render, in exchange for the purchase of a ticket, safe passage upon its aircraft.

ONE HUNDRED FORTIETH: That, in reliance upon this implied warranty of safe passage upon its aircraft, there was purchased for the use and benefit of the plaintiff, Kim Meyers, passage for use upon an aircraft owned, operated, managed and controlled by defendant.

ONE HUNDRED FORTY-FIRST: That, the defendant, its agents, servants, and employees breached the aforesaid warranty of safe passage, as aforesaid.

ONE HUNDRED FORTY-SECOND: That, by reason of this breach of warranty, as aforesaid, plaintiff, Kim Meyers, has suffered compensatory damages in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A TENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, KIM MEYERS

ONE HUNDRED FORTY-THIRD: That, plaintiff, Kim Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED TWENTY-NINTH" through "ONE HUNDRED FORTY-FIRST" of the Ninth Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED FORTY-FOURTH: That, the breach of this said implied warranty was deliberate and calculated on the part of the defendant, its agents, servants and employees, to cause injury and damage to the plaintiff.

ONE HUNDRED FORTY-FIFTH: That, by reason of the foregoing, plaintiff, Kim Meyers, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, KIM MEYERS

ONE HUNDRED FORTY-SIXTH: That, plaintiff, Kim Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED TWENTY-NINTH" through "ONE HUNDRED THIRTY-EIGHTH" of the Ninth Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED FORTY-SEVENTH: That, at the time of the purchase of her certain ticket, hereinabove referred to, defendant entered into an agreement with the plaintiff, that, upon compliance, defendant would

have available to the plaintiff, airline passage from Miami International Airport to John F. Kennedy International Airport unless prevented from doing so by an Act of God.

ONE HUNDRED FORTY-EIGHTH: That, plaintiff fully complied with all of the terms and conditions for passage upon the aforesaid aircraft owned, operated, managed and controlled by the defendant.

ONE HUNDRED FORTY-NINTH: That, defendant, by its actions, as aforesaid, failed and refused to provide such passage upon its said aircraft, by the plaintiff, Kim Meyers.

ONE HUNDRED FIFTIETH: That, said actions, as aforesaid, on the part of the defendant, constituted a breach of its agreement with the plaintiff for the defendant to provide such passage.

ONE HUNDRED FIFTY-FIRST: That, by reason of the breach of the agreement of passage, as aforesaid, by the defendant, plaintiff, Kim Meyers, has been damaged in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A TWELFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, KIM MEYERS

ONE HUNDRED FIFTY-SECOND: That, plaintiff, Kim Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED TWENTY-NINTH" through "ONE HUNDRED FORTY-FIRST" of the Ninth Cause of Action and paragraphs "ONE HUNDRED FORTY-SEVENTH" through "ONE HUNDRED FIFTIETH" of the Eleventh Cause of Action, with the same force and effect as if set forth, at length, herein.

ONE HUNDRED FIFTY-THIRD: That, defendant, by its actions, aforesaid, showed discrimination against and did discriminate against plaintiff, Kim Meyers, and showed unlawful preference to other passengers.

ONE HUNDRED FIFTY-FOURTH: That, defendant, by its actions, aforesaid, granted passengers who had made confirmed reservations later than plaintiff the right to board, be seated, and travel upon the aforesaid flight.

ONE HUNDRED FIFTY-FIFTH: That, defendant, by its actions, aforesaid, granted passengers who had "checked in" and received seating tickets after the plaintiff had "checked in" and received seating tickets the right to board, be seated, and travel upon the aforesaid flight.

ONE HUNDRED FIFTY-SIXTH: That, defendant, by its actions, aforesaid, violated the spirit, intent and letter of 49 U.S.C. #1374.

ONE HUNDRED FIFTY-SEVENTH: That, as a result of these said acts, as aforesaid, plaintiff was greatly humiliated, and suffered great mental and bodily distress, embarrassment, scorn, and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally and emotionally.

ONE HUNDRED FIFTY-EIGHTH: That, by reason thereof, plaintiff, Kim Meyers, has suffered compensatory damage in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A THIRTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, KIM MEYERS

ONE HUNDRED FIFTY-NINTH: That, plaintiff, Kim Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED FIFTY-SECOND" through "ONE HUNDRED FIFTY-SEVENTH" of the Twelfth Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED SIXTIETH: That, the aforesaid discrimination against the plaintiff and the unlawful preference granted to other passengers was deliberate and calculated on the part of the defendant, its agents, servants, and employees, to cause injury and damage to the plaintiff.

ONE HUNDRED SIXTY-FIRST: That, by reason of the foregoing, plaintiff, Kim Meyers, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A FOURTEENTH CAUSE OF ACTION ON BEHALF OF PLAINTIFF, KIM MEYERS

ONE HUNDRED SIXTY-SECOND: That, plaintiff, Kim Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED TWENTY-NINTH" through "ONE HUNDRED THIRTY-EIGHTH" of the Ninth Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED SIXTY-THIRD: That, the acts of the defendant, its agents, servants and employees were in violation of the rules and regulations of the defendant governing the conduct of its employees in connection with the boarding of its airplanes by its fare-paying passengers.

ONE HUNDRED SIXTY-FOURTH: That, the aforesaid acts of defendant were occasioned wholly and solely through the carelessness, recklessness, and negligence of the defendant, with no fault or lack of care on the part of the plaintiff, Kim Meyers, contributing thereto, that said defendant operated, managed, directed and controlled their aforesaid boarding operations in a careless, reckless and negligent manner; in that said defendant, its agents, servants and employees failed and refused to obey defendant's own instructions to its agents, servants, and employees for boarding procedures; and in that said defendant operated, managed, directed and controlled the use of its said aircraft by its passengers in so careless, reckless and negligent a manner as to cause the injuries and damages complained of herein.

ONE HUNDRED SIXTY-FIFTH: That, by reason of the negligence of the defendant, hereinabove alleged, plaintiff became sick, sore,

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lame and disabled; sustained severe and serious personal injuries to various and diverse parts of her body; was compelled to and did undergo extensive medical care and attention for said injuries and was compelled to and did expend large sums of money, therefor; and was otherwise incapacitated from the normal pursuits of life.

ONE HUNDRED SIXTY-SIXTH: That, by reason of the negligence of the defendant, hereinabove alleged, plaintiff was greatly humiliated, and suffered great mental and bodily distress, embarrassment, scorn, and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally and emotionally, as well as in character and reputation.

ONE HUNDRED SIXTY-SEVENTH: That, by reason thereof, plaintiff, Kim Meyers, has suffered compensatory damages in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A FIFTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, KIM MEYERS

ONE HUNDRED SIXTY-EIGHTH: That, plaintiff, Kim Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED SIXTY-SECOND" through "ONE HUNDRED SIXTY-SIXTH" of the Fourteenth Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED SIXTY-NINTH: That, the acts of the defendant, its agents, servants and employees, as aforesaid, were wanton, vicious and malicious and constituted gross negligence.

ONE HUNDRED SEVENTIETH: That, by reason of the foregoing, plaintiff, Kim Meyers, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A SIXTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JAMIE MEYERS,
AN INFANT BY HER FATHER & NATURAL
GUARDIAN, RAYMOND MEYERS

ONE HUNDRED SEVENTY-FIRST: That, plaintiff, Jamie Meyers, is

an infant over the age of fourteen years, to wit: twenty years of age, having been born on the 2nd day of February, 1954.

ONE HUNDRED SEVENTY-SECOND: That, plaintiff, Jamie Meyers, resides at 851 Fanwood Avenue, North Woodmere, in the County of Nassau, State of New York, with her parents, plaintiff, Alice Meyers, and plaintiff, Raymond Meyers.

ONE HUNDRED SEVENTY-THIRD: That, plaintiff, Jamie Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "FIRST" through "TWENTY-NINTH" of the First Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED SEVENTY-FOURTH: That, on or about the 9th day of November, 1970, plaintiff, Alice Meyers, purchased for a good and valuable consideration, a certain airline passage ticket for the use and benefit of the plaintiff, Jamie Meyers, her daughter.

ONE HUNDRED SEVENTY-FIFTH: That, plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs "THIRTY-FIRST" through "THIRTY-EIGHTH" of the First Cause of Action with the same force and effect as if set forth, at length, herein.

ONE HUNDRED SEVENTY-SIXTH: That, said airline passage ticket contained a reservation for plaintiff, Jamie Meyers, to leave John F. Kennedy International Airport on or about December 14, 1970.

ONE HUNDRED SEVENTY-SEVENTH: That, said airline passage ticket provided that Miami International Airport, County of Dade, City of Miami, State of Florida, was the destination point.

ONE HUNDRED SEVENTY-EIGHTH: That, said airline passage ticket contained a reservation for plaintiff, Jamie Meyers, to leave Miami International Airport on January 2, 1971, at 4:30 p.m. on Flight #NA98, as a return trip.

ONE HUNDRED SEVENTY-NINTH: That, plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs "FORTY-SECOND" through "FIFTIETH" of the First Cause of Action.

ONE HUNDRED EIGHTIETH: That, on January 2, 1971, at about 3:30 p.m. in the afternoon, plaintiff "checked in" at the terminal owned, operated, managed and controlled by defendant at Miami International Airport.

ONE HUNDRED EIGHTY-FIRST: That, at said time and place, plaintiff presented her airline passage ticket and requested a seat reservation.

ONE HUNDRED EIGHTY-SECOND: That, this said request was made in person and to those agents, servants or employees of defendant charged by defendant with the duty of conducting to and boarding passengers holding airline passage tickets onto the airplanes owned, operated, managed, and controlled by defendant.

ONE HUNDRED EIGHTY-THIRD: That, although said reservation confirmation guaranteed seating until one-half hour prior to departure time, plaintiff, Jamie Meyers, was advised at the "check-in" counter that all of the seats on said flight had been assigned.

ONE HUNDRED EIGHTY-FOURTH: That, at about 4:15 p.m., plaintiff boarded said airplane, known as and by Flight #98.

ONE HUNDRED EIGHTY-FIFTH: That, plaintiff legally boarded said airplane, pursuant to the directions of the defendant.

ONE HUNDRED EIGHTY-SIXTH: That, defendant, through its agents, servants and employees, directed plaintiff, Jamie Meyers, to board said aircraft and to take any seat.

ONE HUNDRED EIGHTY-SEVENTH: That, at said time and place, plaintiff discovered and learned, for the first time, that there were no seats available for her upon said airplane.

ONE HUNDRED EIGHTY-EIGHTH: That, numerous other agents, servants, and employees of defendant were present on board said airplane at the time.

ONE HUNDRED EIGHTY-NINTH: That, the defendant, its agents, servants and employees, did then direct, demand and order that plaintiff debark from the said airplane.

ONE HUNDRED NINTIETH: That, when plaintiff again requested that she be given the seat for which she had a confirmed reservation with the defendant, its agents, servants and employees, the said defendant, its agents, servants and employees, did repeat their order, direction and demand that plaintiff debark from said airplane.

ONE HUNDRED NINETY-FIRST: That, numerous other agents, servants, and employees of defendant were present on board said airplane at the time.

ONE HUNDRED NINETY-SECOND: That, said plaintiff refused to leave the said airplane and requested again that the defendant, its agents, servants and employees, honor her seat reservation and secure for her the seat which she had reserved with the defendant, its agents, servants and employees.

ONE HUNDRED NINETY-THIRD: That, numerous other agents, servants, and employees of defendant were present on board said airplane at the time.

ONE HUNDRED NINETY-FOURTH: That, said defendant, through its agents, servants and employees, violently, and with force of arms, seized and lay hold of plaintiff, and attempted to forcibly eject plaintiff from said airplane.

ONE HUNDRED NINETY-FIFTH: That, said defendant, its agents, servants, and employees, did then call upon, and request, a police officer of the Metropolitan Police Department of Dade County to enter upon said airplane and aid them in forcibly ejecting the plaintiff from said airplane.

ONE HUNDRED NINETY-SIXTH: That, the said police officer did respond and, under the direction and control of the agents, servants, and employees of the defendant, did aid and assist the agents, servants and employees of the defendant in forcibly ejecting plaintiff from the airplane.

ONE HUNDRED NINETY-SEVENTH: That, plaintiff, Jamie Meyers, was forcibly ejected and ousted from said airplane and denied passage, thereon.

ONE HUNDRED NINETY-EIGHTH: That, all of these said acts of the police officer and the defendant, its agents, servants and employees did constitute an assault upon the person and body of the plaintiff.

ONE HUNDRED NINETY-NINTH: That, by reason of the said assault upon the person and body of the plaintiff, by defendant, as hereinabove alleged, plaintiff became sick, sore, lame and disabled; sustained severe and serious personal injuries to various and diverse parts of her body; was compelled to and did undergo extensive medical care and attention for said injuries and was compelled to and did expend large sums of money therefor; and was otherwise incapacitated from the normal pursuits of life.

TWO HUNDREDTH: That, by reason of said assault upon the person and body of the plaintiff, plaintiff was greatly humiliated, and suffered great mental and bodily distress, embarrassment, scorn, and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally and emotionally, as well as in character and reputation.

TWO HUNDRED FIRST: That, by reason thereof, plaintiff has suffered compensatory damages in the sum of Fifty Thousand (\$50,000.00) Dollars.

AS AND FOR A SEVENTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JAMIE MEYERS

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TWO HUNDRED SECOND: That, plaintiff, Jamie Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED SEVENTY-FIRST" through "TWO HUNDREDTH" of the Sixteenth Cause of Action with the same force and effect as if set forth, at length, herein.

TWO HUNDRED THIRD: That, the aforesaid assault upon the person and body of the plaintiff, Jamie Meyers, was deliberate and calculated on the part of the defendant, its agents, servants and employees, to cause injury and damage to the plaintiff.

TWO HUNDRED FOURTH: That, by reason of the foregoing, plaintiff, Jamie Meyers, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR AN EIGHTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JAMIE MEYERS

TWO HUNDRED FIFTH: That, plaintiff, Jamie Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED SEVENTY-FIRST" through "ONE HUNDRED NINETY-SEVENTH" of the Sixteenth Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED SIXTH: That, the acts of the defendants, its agents, servants and employees were in violation of the rules and regulations of the defendant governing the conduct of its employees in connection with the boarding of its airplanes by its fare-paying passengers.

TWO HUNDRED SEVENTH: That, the aforesaid acts of defendant were occasioned wholly and solely through the carelessness, recklessness, and negligence of the defendant, with no fault or lack of care on the part of plaintiff, Jamie Meyers, contributing thereto, in that said

defendant operated, managed, directed and controlled their aforesaid boarding operations in a careless, reckless and negligent manner; in that said defendant, its agents, servants, and employees, failed and refused to obey defendant's own instructions to its agents, servants, and employees for boarding procedures; and in that said defendant operated, managed, directed and controlled the use of its said aircraft by its passengers in so careless, reckless and negligent a manner as to cause the injuries and damages complained of herein.

TWO HUNDRED EIGHTH: That, by reason of the negligence of the defendant, hereinabove alleged, plaintiff became sick, sore, lame and disabled; sustained severe and serious personal injuries to various and diverse parts of her body; was compelled to and did undergo extensive medical care and attention for said injuries and was compelled to and did expend large sums of money therefor; and was otherwise incapacitated from the normal pursuits of life.

TWO HUNDRED NINTH: That, by reason of the negligence of defendant, hereinabove alleged, plaintiff was greatly humiliated, and suffered great mental and bodily distress, embarrassment, scorn, and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally, and emotionally, as well as in character and reputation.

TWO HUNDRED TENTH: That, by reason thereof, plaintiff, Jamie Meyers, has suffered compensatory damage in the sum of Fifty Thousand (\$50,000.00) Dollars.

AS AND FOR A NINETEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JAMIE MEYERS

TWO HUNDRED ELEVENTH: That, plaintiff, Jamie Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED FIFTH" through "TWO HUNDRED NINTH" of the Eighteenth Cause of Action with same force and effect as if set forth, at length, herein.

TWO HUNDRED TWELFTH: That, the acts of the defendant, its agents, servants and employees, as aforesaid, were wanton, vicious, and malicious and constituted gross negligence.

TWO HUNDRED THIRTEENTH: That, by reason of the foregoing, plaintiff, Jamie Meyers, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A TWENTIETH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JAMIE MEYERS

TWO HUNDRED FOURTEENTH: That, plaintiff, Jamie Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED SEVENTY-FIRST" through "ONE HUNDRED NINETY-SEVENTH" of the Sixteenth Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED FIFTEENTH: That, at the time that said defendant, its agents, servants and employees, offered its tickets for sale to the general public, for passage upon its aircraft, it impliedly warranted to the general public that it would render, in exchange for the purchase of a ticket, same passage upon its aircraft.

TWO HUNDRED SIXTEENTH: That, in reliance upon this implied warranty of safe passage upon its aircraft, plaintiff purchased passage for use upon an aircraft owned, operated, managed and controlled by defendant.

TWO HUNDRED SEVENTEENTH: That, the defendant, its agents, servants, and employees, breached the aforesaid implied warranty of safe passage, as aforesaid.

TWO HUNDRED EIGHTEENTH: That, by reason thereof, plaintiff, Jamie Meyers, has suffered compensatory damage in the sum of Fifty Thousand (\$50,000.00) Dollars.

AS AND FOR A TWENTY-FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JAMIE MEYERS

TWO HUNDRED NINETEENTH: That, plaintiff, Jamie Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED FOURTEENTH" through "TWO HUNDRED SEVENTEENTH" of the Twentieth cause of action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED TWENTIETH: That, the breach of this said implied warranty was deliberate and calculated on the part of the defendant, its agents, servants and employees, to cause injury and damage to the plaintiff.

TWO HUNDRED TWENTY-FIRST: That, by reason of the foregoing, plaintiff, Jamie Meyers, seeks punitive damages in the sum of One Million (\$1,000,000.00) Dollars.

AS AND FOR A TWENTY-SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JAMIE MEYERS

TWO HUNDRED TWENTY-SECOND: That, plaintiff, Jamie Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED SEVENTY-FIRST" through "ONE HUNDRED NINETY-SEVENTH" of the Sixteenth Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED TWENTY-THIRD: That, at the time of the purchase of her certain tickets, hereinabove referred to, defendant entered into an agreement with the plaintiff that, upon compliance, defendant would have available to the plaintiff, airline passage from Miami International Airport to John F. Kennedy International Airport, unless prevented to do so by an Act of G-d.

TWO HUNDRED TWENTY-FOURTH: That, plaintiff fully complied with all of the terms and conditions for passage upon the aforesaid aircraft owned, operated, managed and controlled by the defendant.

TWO HUNDRED TWENTY-FIFTH: That, defendant, by its actions, as aforesaid, failed and refused to provide such passage upon its said aircraft, by the plaintiff, Jamie Meyers.

TWO HUNDRED TWENTY-SIXTH: That, said actions, as aforesaid, on the part of the defendant, constituted a breach of its agreement with the plaintiff for the defendant to provide such passage.

TWO HUNDRED TWENTY-SEVENTH: That, by reason thereof, plaintiff, Jamie Meyers, has suffered compensatory damage in the sum of Fifty Thousand (\$50,000.00) Dollars.

AS AND FOR A TWENTY-THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JAMIE MEYERS

TWO HUNDRED TWENTY-EIGHTH: That, plaintiff, Jamie Meyers repeats, realleges and reiterates each and every allegation contained in paragraphs "ONE HUNDRED SEVENTY-FIRST" through "ONE HUNDRED NINETY-SEVENTH" of the Sixteenth Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED TWENTY-NINTH: That, defendant, by its actions, aforesaid, showed discrimination against plaintiff, Jamie Meyers, and showed unlawful preference to other passengers.

TWO HUNDRED THIRTIETH: That, defendant, by its actions, aforesaid, granted passengers who had made confirmed reservations later than plaintiff the right to board, be seated, and travel upon the aforesaid flight.

TWO HUNDRED THIRTY-FIRST: That, defendant, by its actions aforesaid, granted passengers who had "checked in" after

plaintiff had "checked in" the right to board, be seated and travel upon the aforesaid flight.

TWO HUNDRED THIRTY-SECOND: That, defendant, by its actions, aforesaid, violated the spirit, intent and letter of 49 U.S.C. #1374.

TWO HUNDRED THIRTY-THIRD: That, as a result of these said acts, as aforesaid, plaintiff was greatly humiliated, and suffered great mental and bodily distress, embarrassment, scorn and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally and emotionally, as well as in character and reputation.

TWO HUNDRED THIRTY-FOURTH: That, by reason thereof, plaintiff, Jamie Meyers, has suffered compensatory damage in the sum of Fifty Thousand (\$50,000.00) Dollars.

AS AND FOR A TWENTY-FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JAMIE MEYERS

TWO HUNDRED THIRTY-FIFTH: That, plaintiff, Jamie Meyers, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED TWENTY-EIGHTH" through "TWO HUNDRED THIRTY-THIRD" of the Twenty-Third Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED THIRTY-SIXTH: That, the aforesaid discrimination against the plaintiff and the unlawful preference granted to other passengers was deliberate and calculated on the part of the defendant, its agents, servants, and employees to cause injury and damage to the plaintiff.

TWO HUNDRED THIRTY-SEVENTH: That, by reason of the foregoing, plaintiff, Jamie Meyers, seeks punitive damages, in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A TWENTY-FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, RAYMOND MEYERS

TWO HUNDRED THIRTY-EIGHTH: That, plaintiff, Kim Meyers, is an inform over the age of fourteen years of age, to wit: seventeen years of age, having been born on the 13th day of September, 1956.

TWO HUNDRED THIRTY-NINTH: That, plaintiff, Kim Meyers resides at 851 Fanwood Avenue, North Woodmere, in the County of Nassau, State of New York, with her parents, plaintiff, Alice Meyers, and plaintiff, Raymond Meyers.

TWO HUNDRED FORTIETH: That, plaintiff, Raymond Meyers, repeats, reiterates and realleges each and every allegation contained in paragraphs "ONE HUNDRED SIXTY-SECOND" through "ONE HUNDRED SIXTY-SIXTH" of the Fourteenth Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED FORTY-FIRST: That, at all times herein mentioned plaintiff, Raymond Meyers, was the father of the infant, Kim Meyers, and, as such was entitled to her services and society and was compelled to provide her with all necessary medical care and attention.

TWO HUNDRED FORTY-SECOND: That, by reason of the negligence of the defendant, as aforesaid, plaintiff, Raymond Meyers, was deprived of the services and society of his aforesaid daughter, and was caused to suffer great mental anguish by reason of the injuries sustained by his child, the infant plaintiff, herein.

TWO HUNDRED FORTY-THIRD: That, by reason of the foregoing, plaintiff, Raymond Meyers, has been damaged in the sum of Ten Thousand (\$10,000.00) dollars.

AS AND FOR A TWENTY-SIXTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, RAYMOND MEYERS

TWO HUNDRED FORTY-FOURTH: That, plaintiff, Raymond Meyers, repeats, realleges and reiterates each and every allegation

contained in paragraphs "TWO HUNDRED FIFTH" through "TWO HUNDRED NINTH" of the Eighteenth Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED FORTY-FIFTH: That, at all times herein mentioned, plaintiff, Raymond Meyers, was the father of the infant, Jamie Meyers, and, as such, was entitled to her services and society and was compelled to provide her with all necessary medical care and attention.

TWO HUNDRED FORTY-SIXTH: That, by reason of the negligence of the defendant, as aforesaid, plaintiff, Raymond Meyers, was deprived of the services and society of his aforesaid daughter, was required to expend sums of money for medical care and attention and was caused to suffer great mental anguish by reason of the injuries sustained by his child, the infant plaintiff, herein.

TWO HUNDRED FORTY-SEVENTH: That, by reason of the foregoing, plaintiff, Raymond Meyers, has been damaged in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A TWENTY-SEVENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JOAN EPSTEIN,
BY SAMUEL EPSTEIN, HER FATHER AND
NATURAL GUARDIAN

TWO HUNDRED FORTY-EIGHTH: That, at all times herein mentioned, plaintiff, Joan Epstein, was an infant over the age of fourteen (14) years, to wit: seventeen years of age, having been born on October 29, 1956.

TWO HUNDRED FORTY-NINTH: That, at all times herein mentioned, plaintiff, Joan Epstein, resided with her father and natural guardian, Samuel Epstein, at 835 Talbot Avenue, North Woodmere, in the County of Nassau, State of New York.

TWO HUNDRED FIFTIETH: That, plaintiff repeats, reasserts and reiterates each and every allegation contained in paragraphs "FOURTH" through "TWENTY-NINTH" of the First Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED FIFTY-FIRST: That, during the months of November or December, 1970, there was purchased for a good and valuable consideration, a certain airline passage ticket for the use and benefit of the plaintiff, Joan Epstein.

TWO HUNDRED FIFTY-SECOND: That, said airline passage ticket was purchased for passage on airplanes owned, operated, managed and controlled by defendant.

TWO HUNDRED FIFTY-THIRD: That, this said airline passage ticket was purchased, either directly from the defendant herein, or from an agent authorized and empowered by said defendant to sell tickets and reserve passage on scheduled airlines flights of said defendant.

TWO HUNDRED FIFTY-FOURTH: That, this said airline passage ticket was purchased for a round-trip airplane fare, commencing in John F. Kennedy International Airport, in the County of Queens, City and State of New York, and having a destination of Miami International Airport, County of Dade, City of Miami, State of Florida, and said airline passage ticket, as part of its "round-trip" feature provided airline passage from Miami International Airport, County of Dade, City of Miami, State of Florida, to John F. Kennedy International Airport, County of Queens, City and State of New York.

TWO HUNDRED FIFTY-FIFTH: That, said airline passage ticket contained a reservation for plaintiff, Joan Epstein, to leave John F. Kennedy International Airport on December 18, 1970, at 9:55 a.m., Flight no. NA81.

TWO HUNDRED FIFTY-SIXTH: That, said airline passage ticket provided that Miami International Airport, County of Dade, City of Miami, State of Florida, was the destination point.

TWO HUNDRED FIFTY-SEVENTH: That, said airline passage ticket contained a reservation for plaintiff, Joan Epstein, to leave Miami International Airport on January 2, 1971, at 4:30 p.m., Flight #NA98, as a return trip.

TWO HUNDRED FIFTY-EIGHTH: That, plaintiff, Joan Epstein, repeats, reiterates and realleges each and every allegation contained in paragraphs "FORTY-SECOND" through "SEVENTY-FIRST" of the First Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED FIFTY-NINTH: That, said defendant, through its agents, servants and employees, forcibly ejected plaintiff from said airplane.

TWO HUNDRED SIXTIETH: That, plaintiff, Joan Epstein, was forcibly ejected and ousted from said airplane and denied passage, thereon.

TWO HUNDRED SIXTY-FIRST: That, the acts of the defendant, its agents, servants and employees were in violation of the rules and regulations of the defendant governing the conduct of its employees in connection with the boarding of its airplanes by its fare-paying passengers.

TWO HUNDRED SIXTY-SECOND: That, The aforesaid occurrence was occasioned wholly and solely through the carelessness, recklessness and negligence of the defendant, with no fault or lack of care on the part of the plaintiff, Joan Epstein, contributing thereto, in that said defendant operated, managed, directed and controlled their aforesaid boarding operations in a careless, reckless and negligent manner; in that said defendant, its agents, servants and employees failed and refused to obey defendant's own instructions to its agents, servants and employees for boarding procedures; and in that said defendant operated, managed, directed and controlled the use of its said aircraft by its passengers in so careless, reckless and negligent a manner as to cause the injuries and damages complained of herein.

TWO HUNDRED SIXTY-THIRD: That, by reason of the negligence of the defendant, hereinabove alleged, plaintiff became sick, sore, lame and disabled; sustained severe and serious personal injuries to various and diverse parts of her body; was compelled to and did undergo extensive medical care and attention for said injuries and was compelled to and did expend large sums of money, therefor; and was otherwise incapacitated from the normal pursuits of life.

TWO HUNDRED SIXTY-FOURTH: That, as a result of these said acts, as aforesaid, plaintiff was greatly humiliated, and

suffered great mental and bodily distress, embarrassment, scorn, and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally, and emotionally, as well as in character and reputation.

TWO HUNDRED SIXTY-FIFTH: That, by reason thereof, plaintiff has suffered compensatory damage in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A TWENTY-EIGHTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JOAN EPSTEIN

TWO HUNDRED SIXTY-SIXTH: That, plaintiff, Joan Epstein, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED FORTY-EIGHTH" through "TWO HUNDRED SIXTY-FOURTH" of the Twenty-Seventh Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED SIXTY-SEVENTH: That, the acts of the defendant, its agents, servants, and employees, as aforesaid, were wanton, vicious and malicious and constituted gross negligence.

TWO HUNDRED SIXTY-EIGHTH: That, by reason of the foregoing, plaintiff, Joan Epstein, seeks punitive damages, in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A TWENTY-NINTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JOAN EPSTEIN

TWO HUNDRED SIXTY-NINTH: That, plaintiff, Joan Epstein, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED FORTY-EIGHTH" through "TWO HUNDRED SIXTIETH" of the Twenty-Seventh Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED SEVENTIETH: That, at the time that said defendant, its agents, servants and employees offered its tickets for sale to the general public, for passage upon its aircraft, it impliedly warranted to the general public that it would render, in exchange for the purchase of a ticket, safe passage upon its aircraft.

TWO HUNDRED SEVENTY-FIRST: That, in reliance upon this implied warranty of safe passage upon its aircraft, plaintiff purchased passage for use upon an aircraft owned, operated, managed and controlled by defendant.

TWO HUNDRED SEVENTY-SECOND: That, the defendant, its agents, servants and employees, breached the aforesaid implied warranty of safe passage, as aforesaid.

TWO HUNDRED SEVENTY-THIRD: That, by reason of this breach of warranty, as aforesaid, plaintiff, Joan Epstein, has suffered compensatory damages in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A THIRTIETH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JOAN EPSTEIN

TWO HUNDRED SEVENTY-FOURTH: That, plaintiff, Joan Epstein, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED SIXTY-NINTH" through "TWO HUNDRED SEVENTY-SECOND" of the Twenty-Ninth Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED SEVENTY-FIFTH: That, the breach of this said implied warranty was deliberate and calculated on the part of the defendant, its agents, servants and employees, to cause injury and damage to the plaintiff.

TWO HUNDRED SEVENTY-SIXTH: That, by reason of the foregoing, plaintiff, Joan Epstein, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A THIRTY-FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JOAN EPSTEIN

TWO HUNDRED SEVENTY-SEVENTH: That, plaintiff Joan Epstein, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED FORTY-EIGHTH" through "TWO HUNDRED SIXTIETH" of the Twenty-Seventh Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED SEVENTY-EIGHTH: That, at the time of the purchase of her certain ticket, hereinabove referred to, defendant entered into an agreement with the plaintiff that, upon compliance, defendant would have available to the plaintiff, airline passage from Miami International Airport to John F. Kennedy International Airport, unless prevented to do so by an Act of God.

TWO HUNDRED SEVENTY-NINTH: That, plaintiff fully complied with all of the terms and conditions for passage upon the aforesaid aircraft owned, operated, managed, and controlled by the defendant.

TWO HUNDRED EIGHTIETH: That, defendant, by its actions, as aforesaid, failed and refused to provide such passage upon its said aircraft, to the plaintiff, Joan Epstein.

TWO HUNDRED EIGHTY-FIRST: That, said actions, as aforesaid, on the part of the defendant, constituted a breach of its agreement with the plaintiff for the defendant to provide such passage.

TWO HUNDRED EIGHTY-SECOND: That, by reason of the breach of the agreement of passage, as aforesaid, by the defendant, plaintiff, Joan Epstein, has been damaged in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A THIRTY-SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JOAN EPSTEIN

TWO HUNDRED EIGHTY-THIRD: That, plaintiff, Joan Epstein, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED FORTY-EIGHTH" through "TWO HUNDRED SIXTIETH" of the Twenty-Seventh Cause of Action with the same force and effect as if set forth, at length, herein.

TWO HUNDRED EIGHTY-FOURTH: That, defendant, by its actions, aforesaid, showed discrimination against, plaintiff, Joan Epstein, and showed unlawful preference to other passengers.

TWO HUNDRED EIGHTY-FIFTH: That, defendant, by its actions, aforesaid, granted passengers who had made confirmed reservations later than plaintiff the right to board, be seated and travel upon the aforesaid flight.

TWO HUNDRED EIGHTY-SIXTH: That, defendant, by its actions, aforesaid, granted passengers who had "checked in" and received seating tickets after the plaintiff had "checked in" and received seating tickets the right to board, be seated and travel upon the aforesaid flight.

TWO HUNDRED EIGHTY-SEVENTH: That, defendant, by its actions, aforesaid, violated the spirit, intent and letter of 49 U.S.C. #1374.

TWO HUNDRED EIGHTY-EIGHTH: That, as a result of these said acts, as aforesaid, plaintiff was greatly humiliated, and suffered great mental and bodily distress, embarrassment, scorn and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally and emotionally, as well as in character and reputation.

TWO HUNDRED EIGHTY-NINTH: That, by reason thereof, plaintiff, Joan Epstein, has suffered compensatory damage in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A THIRTY-THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, JOAN EPSTEIN

←TWO HUNDRED NINTIETH: That, plaintiff, Joan Epstein, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED EIGHTY-THIRD" through "TWO HUNDRED EIGHTY-EIGHTH" of the Thirty-Second Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED NINETY-FIRST: That, the aforesaid discrimination against the plaintiff and the unlawful preference granted

to other passengers was deliberate and calculated on the part of the defendant, its agents, servants and employees to cause injury and damage to the plaintiff.

TWO HUNDRED NINETY-SECOND: That, by reason of the foregoing, plaintiff, Joan Epstein, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A THIRTY-FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, SAMUEL EPSTEIN

TWO HUNDRED NINETY-SECOND A: That, plaintiff, Samuel Epstein, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED FORTY-EIGHTH" through "TWO HUNDRED SIXTY-FOURTH" of the Twenty-Seventh Cause of Action, with the same force and effect as if set forth, at length, herein.

TWO HUNDRED NINETY-THIRD: That, plaintiff, Samuel Epstein, repeats, realleges and reiterates each and every allegation contained in paragraph "TWO HUNDRED SIXTY-SEVENTH" of the Twenty-Eighth Cause of Action with same force and effect as if set forth, at length, herein.

TWO HUNDRED NINETY-FOURTH: That, plaintiff, Samuel Epstein, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED SEVENTIETH" through "TWO HUNDRED SEVENTY-SECOND" of the Twenty-Ninth Cause of Action with the same force and effect as if set forth, at length, herein.

TWO HUNDRED NINETY-FIFTH: That, at all times herein mentioned, plaintiff, Samuel Epstein, was the father of the infant Joan Epstein, and, as such, was entitled to her services and society and was compelled to provide her with all necessary medical care and attention.

TWO HUNDRED NINETY-SIXTH: That, by reason of the negligence and breach of warranty of the defendant, as aforesaid, plaintiff, Samuel Epstein, was deprived of the services and society

of his aforesaid daughter, and was caused to suffer great mental anguish by reason of the injuries sustained by his child, the infant plaintiff, herein.

TWO HUNDRED NINETY-SEVENTH: That by reason of the foregoing, plaintiff, Samuel Epstein, has been damaged in the sum of Ten Thousand (\$10,000.00) Dollars.

AS AND FOR A THIRTY-FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ROBIN SIEGEL, by
BERNARD SIEGEL, HER FATHER & NATURAL GUARDIAN

TWO HUNDRED NINETY-EIGHTH: That, plaintiff, Robin Siegel is an infant over the age of fourteen (14) years, to wit: nineteen (19) years of age, having been born on the 5th day of November, 1954.

TWO HUNDRED NINETY-NINTH: That, at all times herein mentioned, plaintiff, Robin Siegel, resided with her father and natural guardian, Bernard Siegel, at 1079 Duston Road, North Woodmere, in the County of Nassau, State of New York.

THREE HUNDRED THIRTY: That, plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs "FOURTH" through "TWENTY-NINTH" of the First Cause of Action.

THREE HUNDRED FIRST: That, during the months of November or December, 1970, there was purchased for a good and valuable consideration, a certain airline passage ticket for the use and benefit of the plaintiff, Robin Siegel.

THREE HUNDRED SECOND: That, said airline passage ticket was purchased for passage on airplanes owned, operated, managed and controlled by defendant.

THREE HUNDRED THIRD: That, this said airline passage ticket was purchased, either directly from the defendant herein, or from an agent authorized and empowered by said defendant to sell tickets and reserve passage on scheduled airline flights of

said defendant.

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THREE HUNDRED FOURTH: That this said airline passage ticket was purchased for a round-trip airplane fare, commencing in John F. Kennedy International Airport, in the County of Queens, City and State of New York, and having a destination of Miami International Airport, County of Dade, City of Miami, State of Florida, and said airline passage ticket, as part of its "round-trip" feature provided airline passage from Miami International Airport, County of Dade, City of Miami, State of Florida to John F. Kennedy International Airport, County of Queens, City and State of New York.

THREE HUNDRED FIFTH: That, said airline passage ticket contained a reservation for plaintiff, Robin Siegel, to leave John F. Kennedy International Airport on or about December 14, 1970.

THREE HUNDRED SIXTH: That, said airline passage ticket provided that Miami International Airport, County of Dade, City of Miami, State of Florida, was the destination point.

THREE HUNDRED SEVENTH: That, said airline passage ticket contained a reservation for plaintiff, Robin Siegel, to leave Miami International Airport on January 2, 1971, at 4:30 P.M., Flight #NA98, as a return trip.

THREE HUNDRED EIGHTH: That, plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs "FORTY-SECOND" through "FORTY-FIFTH" of the First Cause of Action.

THREE HUNDRED NINTH: That, plaintiff, at the time of the purchase of her airline passage ticket, had reserved space for herself on said Flight #NA98, scheduled to depart Miami International Airport on January 2, 1971, at 4:30 in the afternoon.

THREE HUNDRED TENTH: That, on January 2, 1971, at about 3:30 in the after... , plaintiff "checked in" at the terminal owned, operated, managed and controlled by defendant at Miami International Airport.

THREE HUNDRED ELEVENTH: That plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs "FORTY-SEVENTH" through "FIFTIETH" with the same force and effect as if set forth, at length, herein.

THREE HUNDRED TWELFTH: That, at said time and place, plaintiff presented her airline passage ticket and requested a seat reservation.

THREE HUNDRED THIRTEENTH: That, this said request was made in person and to those agents, servants or employees of defendant charged by defendant with the duty of conducting to and boarding passengers holding airline passage tickets onto the airplanes owned, operated, managed and controlled by defendant.

THREE HUNDRED FOURTEENTH: That, although said reservation confirmation guaranteed seating until one-half hour prior to departure time, plaintiff, Robin Siegel, was advised at the "check-in" counter that all of the seats on said flight had been assigned.

THREE HUNDRED FIFTEENTH: That, at about 4:15 p.m. plaintiff boarded said airplane, known as and by Flight #98.

THREE HUNDRED SIXTEENTH: That, plaintiff legally boarded said airplane, pursuant to the directions of the defendant.

THREE HUNDRED SEVENTEENTH: That, defendant, through its agents, servants and employees, directed plaintiff, Robin Siegel, to board said aircraft and to take any seat.

THREE HUNDRED EIGHTEENTH: That, at said time and place, plaintiff discovered and learned, for the first time that there were no seats available for her upon said airplane.

THREE HUNDRED NINETEENTH: That, numerous other agents, servants and employees of defendant were present on board said airplane at the time.

THREE HUNDRED TWENTIETH: That, the defendant, its agents, servants and employees, did then direct, demand and order that plaintiff debark from said airplane.

THREE HUNDRED TWENTY-FIRST: That, when plaintiff again requested that she be given the seat for which she had a confirmed reservation with the defendant, its agents, servants, and employees, the said defendant, its agents, servants and employees, did repeat their order, direction and demand that plaintiff debark from said airplane.

THREE HUNDRED TWENTY-SECOND: That, numerous other agents, servants and employees of defendant were present on board said airplane at the time.

THREE HUNDRED TWENTY-THIRD: That said plaintiff refused to leave the said airplane and requested, again, that the defendant, its agents, servants and employees, honor her

seat reservation and secure for her the seat which she had reserved with the defendant, its agents, servants and employees.

THREE HUNDRED TWENTY-FOURTH: That numerous other agents, servants and employees of defendant were present on board said airplane at the time.

THREE HUNDRED TWENTY-FIFTH: That said defendant, through its agents, servants and employees, forcibly ejected the plaintiff from said airplane.

THREE HUNDRED TWENTY-SIXTH: That, plaintiff, Robin Siegel, was forcibly ejected and ousted from said airplane and denied passage thereon.

THREE HUNDRED TWENTY-SEVENTH: That, the acts of the defendant, its agents, servants and employees were in violation of the rules and regulations of the defendant governing the conduct of its employees in connection with the boarding of its airplanes by its fare-paying passengers.

THREE HUNDRED TWENTY-EIGHTH: That, the aforesaid occurrence was occasioned wholly and solely through the carelessness, recklessness and negligence of the defendant, with no fault or lack of care on the part of the plaintiff, Robin Siegel, contributing thereto, in that said defendant operated, managed, directed and controlled their aforesaid boarding operations in a careless, reckless and negligent manner, in that said defendant, its agents, servants and employees, failed and refuse to obey defendant's own instructions to its agents, servants and employees for boarding procedures; and in that said defendant operated,

managed, directed and controlled the use of its aircraft by its passengers in so careless, reckless and negligent manner as to cause the injuries and damages complained of herein. 97a

THREE HUNDRED TWENTY-NINTH: That, as a result of these said acts, as aforesaid, plaintiff was greatly humiliated, and suffered great mental and bodily distress, embarrassment, scorn, and was made sick and unwell, and otherwise suffered grievous harm thereby, and was greatly injured physically, mentally, and emotionally, as well as in character and reputation.

THREE HUNDRED THIRTIETH: That, by reason thereof, plaintiff, Robin Siegel, has suffered compensatory damages in the sum of Twenty Five Thousand (\$25,000.00) Dollars.

AS AND FOR A THIRTY-SIXTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ROBIN SIEGEL

THREE HUNDRED THIRTY-FIRST: That, plaintiff, Robin Siegel, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED NINTY-EIGHTH" through "THREE HUNDRED TWENTY-NINTH" of the Thirty-Fifth Cause of Action, with the same force and effect as if set forth, at length, herein.

THREE HUNDRED THIRTY-SECOND: That, the acts of the defendant, its agents, servants and employees, as aforesaid, were wanton, vicious and malicious and constituted a gross negligence.

THREE HUNDRED THIRTY-THIRD: That, by reason of the foregoing, plaintiff, Robin Siegel, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A THIRTY-SEVENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ROBIN SIEGEL

THREE HUNDRED AND THIRTY-FOURTH: That, plaintiff, Robin Siegel, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED NINTY-EIGHTH" through "THREE HUNDRED TWENTY - SEVENTH", of the Thirty-Fifth

Cause of Action, with the same force and effect as if set forth, at length, herein.

THREE HUNDRED THIRTY-FIFTH: That, at the time that said defendant, its agents, servants, and employees, offered its tickets for sale to the general public, for passage upon its aircraft, it impliedly warranted to the general public that it would render, in exchange for the purchase of a ticket, safe passage upon its aircraft.

THREE HUNDRED THIRTY-SIXTH: That, in reliance upon this implied warranty of safe passage upon its aircraft, plaintiff purchased passage for use upon an aircraft owned, operated, managed and controlled by defendant.

THREE HUNDRED THIRTY-SEVENTH: That, the defendant, its agents, servants and employees, breached the aforesaid implied warranty of safe passage, as aforesaid.

THREE HUNDRED THIRTY-EIGHTH: That by reason of this breach of warranty, as aforesaid, plaintiff, Robin Siegel, has suffered compensatory damages in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A THIRTY-EIGHTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ROBIN SIEGEL

THREE HUNDRED THIRTY-NINTH: That, plaintiff, Robin Siegel, repeats, realleges and reiterates each and every allegation contained in paragraphs "THREE HUNDRED THIRTY-FOURTH" through "THREE HUNDRED THIRTY-SEVENTH", of the Thirty-Seventh Cause of Action, with the same force and effect as if set forth, at length herein.

THREE HUNDRED FORTIETH: That, the breach of this said implied warranty was deliberate and calculated on the part of the defendant, its agents, servants and employees, to cause injury and damage to the plaintiff.

THREE HUNDRED FORTY-FIRST: That, by reason of the foregoing, plaintiff, Robin Siegel, seeks punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A THIRTY-NINTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ROBIN SIEGEL

THREE HUNDRED FORTY-SECOND: That, plaintiff, Robin Siegel, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED NINTH-EIGHTH" through "THREE HUNDRED TWENTY-SIXTH" of the Thirty-Fifth Cause of Action, with the same force and effect as if set forth, at length, herein.

THREE HUNDRED FORTY-THIRD: That, at the time of the purchase of her certain ticket, hereinabove referred to, defendant entered into an agreement with the plaintiff that, upon compliance defendant would have available to the plaintiff, airline passage from Miami International Airport to John F. Kennedy International Airport, unless prevented to do so by an Act of God.

THREE HUNDRED FORTY-FOURTH: That, plaintiff fully complied with all of the terms and conditions for passage upon the aforesaid aircraft owned, operated, managed and controlled by the defendant.

THREE HUNDRED FORTY-FIFTH: That, defendant, by its actions, as aforesaid, failed and refused to provide such passage upon its said aircraft, by the plaintiff, Robin Siegel.

THREE HUNDRED FORTY-SIXTH: That, said actions, as aforesaid, on the part of the defendant, constituted a breach of its agreement with the plaintiff for the defendant to provide

THREE HUNDRED FORTY-SEVENTH: That, by reason of this breach of warranty, as aforesaid, plaintiff, Robin Siegel, has suffered compensatory damages in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A FORTIETH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ROBIN SIEGEL

THREE HUNDRED FORTY-EIGHTH: That plaintiff, Robin Siegel, repeats, realleges and reiterates each and every allegation contained in paragraphs "TWO HUNDRED NINETY-EIGHTH" through "THREE HUNDRED TWENTY-SIXTH" of the Thirty-Fifth Cause of Action with the same force and effect as if set forth, at length, herein.

THREE HUNDRED FORTY-NINTH: That, defendant, by its actions, aforesaid, showed discrimination against plaintiff, Robin Siegel, and showed unlawful preference to other passengers.

THREE HUNDRED FIFTIETH: That, defendant, by its actions, aforesaid, granted passengers who had made confirmed reservations later than plaintiff, the right to board, be seated, and travel upon the aforesaid flight.

THREE HUNDRED FIFTY-FIRST: That, defendant, by its actions, aforesaid, granted passengers who had made confirmed reservations later than plaintiff the right to board, be seated and travel upon the aforesaid flight.

THREE HUNDRED FIFTY-SECOND: That, defendant, by its actions, aforesaid, granted passengers who had "checked in" after plaintiff had "checked in" the right to board, be seated and travel upon the aforesaid flight.

THREE HUNDRED FIFTY-THIRD: That, defendant, by its actions, aforesaid, violated the spirit, intent and letter of 49 U.S.C. #1374.

THREE HUNDRED FIFTY-FOURTH: That, as a result of these
said acts, as aforesaid, plaintiff was greatly humiliated, and
suffered great mental and bodily distress, embarrassment, scorn and
was made sick and unwell, and otherwise suffered grievous harm
thereby, and was greatly injured physically, mentally and emotionally,
as well as in character and reputation.

THREE HUNDRED FIFTY-FIFTH: That, by reason of the
foregoing, plaintiff, Robin Siegel, has suffered compensatory
damages in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

AS AND FOR A FORTY-FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, ROBIN SIEGEL

THREE HUNDRED FIFTY-SIXTH: That, plaintiff, Robin Siegel,
repeats, realleges and reiterates each and every allegation
contained in paragraphs "THREE HUNDRED FORTY-EIGHTH", through
"THREE HUNDRED FIFTY-FOURTH", of the Fortieth Cause of Action,
with the same force and effect as if set forth, at length, herein.

THREE HUNDRED FIFTY-SEVENTH: That, the aforesaid
discrimination against the plaintiff and the unlawful preference
granted to other passengers was deliberate and calculated on the
part of the defendant, its agents, servants, and employees to cause
injury and damage to the plaintiff.

THREE HUNDRED FIFTH-EIGHTH: That, by reason of the
foregoing, plaintiff, Robin Siegel, seeks punitive damages in the
sum of Ten Million (\$10,000,000.00) Dollars.

AS AND FOR A FORTY-SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, BERNARD SIEGEL

THREE HUNDRED FIFTY-NINTH : That, plaintiff, Bernard
Siegel, repeats, realleges and reitcrates each and every allegation
contained in paragraphs "TWO HUNDRED NINTH-EIGHTH" through "THREE
HUNDRED TWENTY-NINTH" of the Thirty-Fifth Cause of Action. with

the same force and effect as if set forth, at length, herein.

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THREE HUNDRED SIXTIETH: That, plaintiff, Bernard Siegel, repeats, realleges and reiterates each and every allegation contained in paragraph "THREE HUNDRED THIRTY-SECOND" of the Thirty-Sixth Cause of Action, with the same force and effect as if set forth, at length, herein.

THREE HUNDRED SIXTY-FIRST: That, plaintiff, Bernard Siegel repeats, realleges and reiterates each and every allegation contained in paragraphs "THREE HUNDRED THIRTY-FIFTH" through "THREE HUNDRED THIRTY-SEVENTH" of the Thirty-Seventh Cause of Action, with the same force and effect as if set forth, at length, herein.

THREE HUNDRED SIXTY-SECOND: That, at all times herein mentioned, plaintiff, Bernard Siegel, was the father of the infant Robin Siegel, and, as such, was entitled to her services and society and was compelled to provide her with all necessary medical care and attention.

THREE HUNDRED SIXTY-THIRD: That, by reason of the negligence and breach of warranty of the defendant, as aforesaid, plaintiff, Bernard Siegel, was deprived of the services and society of his aforesaid daughter, and was caused to suffer great mental anguish by reason of the injuries sustained by his child, the infant plaintiff Robin Siegel, herein.

THREE HUNDRED SIXTY-FOURTH: That, by reason of the foregoing, plaintiff, Bernard Siegel, has been damaged in the sum of Ten Thousand (\$10,000.00) Dollars.

WHEREFORE,

(A) Plaintiff, Alice Meyers, demands judgment against the defendant, as follows:

1. On the First and Third Causes of Action in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars;
2. On the Second and Fourth Causes of Action in the sum of Ten Million (\$10,000,000.00) Dollars;
3. On the Fifth Cause of Action in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars;
4. On the Seventh Cause of Action in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars;
5. On the Eight Cause of Action in the sum of Ten Million (\$10,000,000.00) Dollars.

(B) Plaintiff, Kim Meyers, demands judgment against the defendant, as follows:

1. On the Ninth and Fourteenth Causes of Action in the sum of Twenty-Five Thousand (\$25,000.00) Dollars;
2. On the Tenth and Fifteenth Causes of Action in the sum of Ten Million (\$10,000,000.00) Dollars;
3. On the Eleventh Cause of Action in the sum of Twenty-Five Thousand (\$25,000.00) Dollars;
4. On the Twelfth Cause of Action in the sum of Twenty-Five Thousand (\$25,000.00) Dollars;
5. On the Thirteenth Cause of Action in the sum of Ten Million (\$10,000,000.00) Dollars.

(C) Plaintiff, Jamie Meyers, demands judgment against defendant, as follows:

1. On the Sixteenth, Eighteenth and Twentieth Causes of Action in the sum of Fifty Thousand (\$50,000.00) Dollars;

2. On the Seventeenth, Nineteenth and Twenty-First Causes of Action in the sum of Ten Million (\$10,000,000.00) Dollars;
3. On the Twenty-Second Cause of Action in the sum of Fifty Thousand (\$50,000.00) Dollars;
4. On the Twenty-Third Cause of Action in the sum of Fifty Thousand \$50,000.00) Dollars;
5. On the Twenty-Fourth Cause of Action in the sum of Ten Million (\$10,000,000.00) Dollars.

(D) Plaintiff, Raymond Meyers, demands judgment against defendant, as follows:

1. On the Sixth Cause of Action in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars;
2. On the Twenty-Fifth Cause of Action in the sum of Ten Thousand (\$10,000.00) Dollars;
3. On the Twenty-Sixth Cause of Action in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

(E) Plaintiff, Joan Epstein, demands judgment against defendant, as follows:

1. On the Twenty-Seventh and Twenty-Ninth Causes of Action in the sum of Twenty-Five Thousand (\$25,000.00) Dollars;
2. On the Twenty-Eighth and Thirtieth Causes of Action in the sum of Ten Million (\$10,000,000.00) Dollars;
3. On the Thirty-First Cause of Action in the sum of Twenty-Five Thousand (\$25,000.00) Dollars;
4. On the Thirty-Second Cause of Action in the sum of Twenty-Five Thousand (\$25,000.00) Dollars;
5. On the Thirty-Third Cause of Action in the sum of Ten Million (\$10,000,000.00) Dollars.

(F) Plaintiff, Samuel Epstein, demands judgment against defendant, as follows:

1. On the Thirty-Fourth Cause of Action in the sum of Ten Thousand (\$10,000.00) Dollars.

(G) Plaintiff, Robin Siegel, demands judgment against the defendant, as follows:

1. On the Thirty-Fifth and Thirty-Seventh Causes of Action in the sum of Twenty-Five Thousand (\$25,000.00) Dollars;

2. On the Thirty-Sixth and Thirty-Eighth Causes of Action in the sum of Ten Million (\$10,000,000.00) Dollars;

3. On the Thirty-Ninth Cause of Action in the sum of Twenty-Five Thousand (\$25,000.00) Dollars;

4. On the Fortieth Cause of Action in the sum of Twenty-Five Thousand (\$25,000.00) Dollars;

5. On the Forty-First Cause of Action in the sum of Ten Million (\$10,000,000.00) Dollars;

(H) Plaintiff, Bernard Siegel, demands judgment against defendant, as follows:

1. On the Forty-Second Cause of Action in the sum of Ten Thousand (\$10,000.00) Dollars.

(I) Plaintiffs, above set forth, demand, in addition to the foregoing, interest from the 2nd day of January, 1971, together with the costs and disbursements of this action.

LAWRENCE WALDMAN, ESQ.
Attorney for Plaintiffs
Office & P. O. Address
111 West 57th Street
New York, New York 10019
(212) 265-5385

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ALICE MEYERS, et al.,

Plaintiffs-Appellants.

Index No.

- against -

NATIONAL AIRLINES, INC.,

Defendant-Appellee.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF New York

ss.:

I, James Steele, being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
250 West 146th Street, New York, New York
That on the 11th day of April 1975 at One State Street Plaza, N.Y. N.Y.

deponent served the annexed Appendix upon

Haight Gardner Poor & Havens

the Attorneys in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein.

Sworn to before me, this 11th
day of April 1975

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975
1577

JAMES STEELE



